

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.440/SRT/2018

Assessment Year: (2014-15)

(Virtual Hearing)

The ACIT, Circle-1, Bharuch.	Vs.	M/s. J. K. Jewellers, Station Road, Near Rungta School, Bharuch.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFJ5951F		
(Assessee)		(Respondent)

आयकर अपील सं./ITA No.443/SRT/2018

Assessment Year: (2014-15)

M/s. J. K. Jewellers, Station Road, Near Rungta School, Bharuch.	Vs.	The ACIT, Circle-1, Bharuch.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFJ5951F		
(Assessee)		(Respondent)

Assessee by	Shri Ashok B. Koli, CIT(DR)
Respondent by	Shri Vartik Choksi, AR
Date of Hearing	31/07/2023
Date of Pronouncement	19/09/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned cross appeals filed by the Revenue and Assessee, pertaining to Assessment Year (AY) 2014-15, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals)-3, [in short “the ld. CIT(A)”], Vadodara, in Appeal No. CIT(A)-Vadodara-3/10408/2016-17, dated 18.01.2017, which in turn arise out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 30.12.2016.

2. Since, the issues involved in these two appeals, are common and identical; therefore, these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. Grounds of appeal raised by the Revenue, in ITA No. 440/SRT/2018, for AY.2014-15, are as follows:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in restricting addition on account of net profit on cash sale of bullion to Rs.1,56,198/- thereby allowing a relief to the assessee to the tune of Rs.3,59,947/- without appreciating the facts that assessee could not prove conversion of 24 Ct gold to lower Ct grade conversion for 8324.971 grams gold.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in deleting addition on account of unexplained investment of Rs.1,76,37,385/- out of total addition of Rs.2,47,63,170/- by stating that the assessee has produced labour bills of conversion in respect of balance gold from 24 ct to 22 ct gold and more so that such bills were pertaining to period to the date of survey, payment were made to labour prior to survey date and TDS was deducted.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in deleting addition on account of unexplained investment for purchase in stock-in-trade of Rs.1,61,74,000/- by stating that source of income for Rs.2.55 crore has been offered to tax and therefore separate addition of Rs.1,61,74,000/- is unwarranted. However, the Ld. CIT(A) has failed to appreciate the fact that the cash advance of Rs.1,61,74,000/- were admitted by the partner of the assessee as a diary was found and impounded during the course of survey proceeding where in specific details containing date and amounts of advance payments made were maintained.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in accepting the retraction of the assessee of his disclosure of Rs.5,80,46,000/- made during the survey on the basis of unexplained investment, net profit on difference of value, unexplained purchase of bullion and further discrepancy.

5. The assessee craves to add to, amend or alter the above ground as may be deemed necessary.

4. Grounds of appeal raised by the assessee in ITA No. 443/SRT/2018 for AY.2014-15, are as follows:

“1.1 In law and in the facts and circumstances of the assessee’s case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.50,54,350/- out of total disallowance of Rs.2,26,91,736/- on account of unexplained investment in 22 ct gold as alleged by the learned Assessing Officer.

1.2 In law and in the facts and circumstances of the assessee’s case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.16,22,484/- on account of unexplained investment in 18 ct gold as alleged by the Assessing Officer.

1.3 In law and in the facts and circumstances of the assessee’s case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.4,48,950/- on account of unexplained investment in 18 ct branded jewellery as alleged by the learned Assessing Officer.

1.4 In law and in the facts and circumstances of the assessee’s case, the learned CIT(A) has grossly erred in confirming addition on account of Net profit on cash sale of bullion for Rs.1,56,198/- out of total addition of Rs.5,16,145/- made by the Ld. Assessing Officer.

1.5 In law and in the facts and circumstances of the assessee’s case, the learned CIT(A) has grossly erred in rejecting partial conversion of gold for 2519.33 grams, conversion from 24 ct. to different other lower grades of ct. gold i.e. 22 ct, 18ct. gold.

2. In law and in the facts and circumstances of the assessee’s case, the learned CIT(A) has grossly erred in not accepting the alternative plea of the assessee that the adhoc disclosure made during the course of survey proceeding for Rs.5,97,450/- (on which due taxes were also paid) was adequate to cover expenses incurred for balance conversion of 24 ct. to different other lower grades of ct gold. i.e. 22ct., 18 ct gold.

3. In law and in the facts and circumstances of the assessee’s case, the learned CIT(A) has grossly erred in not dealing with the ground no.2 and 3 holding it to be general in nature.

4. In law and in the facts and circumstances of the assessee’s case, the learned CIT(A) has grossly erred in not quashing the impugned notice issued u/s 274 r.w.s 271(1)(c) and holding ground no.5 to be pre-mature.

5. The assessee craves leave to add, amend and/or alter the ground or grounds of appeal either before or at the time of hearing of the appeal.”

5. Since the grounds of appeals raised by the Revenue and Assessee are interconnected and mix, therefore, we shall adjudicate them together.

6. We advert to the relevant facts. Before us the assessee is a partnership firm and engaged in the business of Jewellery, trading of gold, silver and diamond ornaments. In assessee's case a survey action u/s 133A of the Act was carried out at the business premises of the assessee on 25.02.2014. The assessee has filed its return of income on 28.11.2014 declaring total income of Rs.1,66,02,280/-. The assessee's case was selected for scrutiny through CASS and statutory notice u/s 143(2) of the Act was issued on 01.09.2015. Subsequently, notice u/s 142(1) of the Act was issued on 26.05.2016.

7. **Findings of survey:** The assessing officer noted the following findings of survey team in his assessment order, which is mentioned below:

The assessing officer noted that during the course of survey proceedings, physical stock and stock as per books of the assessee were examined by the Investigation Wing, Bharuch on 25/02/2014. Details of the same are as follows:

Sr. No.	Item description	Stock		Difference (in Grms.)	Difference in value
		As per physical (in Grms.)	As per book (in Grms.)		
1.	Total of 22 Ct. Jewellery-	46452.22	36110.00	10342.22	31419664
2.	Total of 22 Ct. Old Gold jewellery	1425.78	---	1425.78	4047789
3.	Total of 18 Ct. Gold jewellery	999.90	323.87	676.04	1622484
	Diamond jewellery	76.68	59.20	17.48	823728
4.	Total of 24 Ct. Gold	912.15	19762.00	18849.85	58434535
5.	Total of 18 Ct. branded jewellery	179.58		179.58	448950
6.	Total of silver bar	18550.00	3269.70	15280.30	702894
7.	Silver ornaments	126866.00	95340.22	31525.78	1040351

(a) Unexplained investment in stock:

During the course of survey proceedings, valuation of the physical stock available at the business premise of the assessee was done by the

Government approved Valuer. As per the valuation report dated 25/02/2014, the stock details are as follows:

Gold & diamond ornaments, silver bar and silver ornaments:

Sr. No	Item Description	Difference (Quantity)	Difference (Value) in Rs.
1	Total 22 Ct Jewellery	10342.220	3,14,19,664
2	Total 22 Ct Old Gold	1425.780	40,47,789
3	Total 18 Ct Old Gold	676.040	16,22,484
4	Diamond Jewellery	17.78	8,23,728
5	18 Ct Branded Jewellery	179.580	4,48,950
6	Silver Bar	15280.30	7,02,894
7	Silver Ornaments	31525.780	<u>10,40,351</u>
Total			4,01,05,860

(b) Bullion Shortage:

Shortage of 24 ct. gold in quantity was at 18849.85 gms. having difference value of Rs.5,84,34,535/- (as reflected in para 4.1 above). As mentioned by the assessee, maximum net profit on sale of bullion was at 2%. Thus, the NP of 2% of difference value (*Physical stock found - Stock as per books*), the assessee had declared Rs.11,68,690/- (Rs.5,84,34,535 X 2%). During the course of survey proceedings, statement of Shri Deepak Chokshi, partner of the assessee -firm was recorded on oath on 25/02/2014. In Que. No. 57, the assessee was particularly asked to explain the difference in stock as per valuation report as unexplained investment in stock of Rs.4,01,05,860/- and undisclosed income of Rs.11,68,690/-. In response to Que. No. 57, the assessee has stated that both (i) unexplained investment of Rs.4,01,05,860/- and (ii) undisclosed income of Rs.11,68,690/- were its undisclosed income for the F.Y. 2013-14 (A.Y. 2014-15) and has also offered to pay the tax for that without claiming any further deductions for the same.

(c) Advances for Material Purchases:

During the course of survey proceedings, a diary annexed as A-1/4 was found and impounded. This diary contains figures mentioned against various dates for which the assessee was asked to explain the same in Que. No. 59. In response to Que. No. 59 of statement recorded on oath during the course of survey proceedings, Shri Deepak Choksi, partner of the assessee- firm has stated that this diary was maintained by him in his own handwriting. Further, Shri Deepak Choksi in his statement stated that the figures against various dates show the advances given to purchase material to various persons. Thus, the unaccounted bullion purchase in cash for the F.Y. 2013-14, as gathered from the diary as annexed in Annexure A-1/4 from Page No. 1 to 7 was of Rs.1,61,74,000/-. During the course of survey proceedings, in Ans. to Que. No. 60, Sh Deepak Choksi admitted that these purchases were not entered in the regular books of accounts of the assessee firm. During the course of survey proceedings, the assessee had declared Rs.1,61,74,000/-as undisclosed investment for purchase of stock in trade and offered to pay tax on it.

(d) Thus, as mentioned (a), (b) & (c) above, during the course of survey proceedings, the assessee had declared following undisclosed income for the year under consideration:

<i>Sr.</i>	<i>On account of</i>	<i>Undisclosed income</i>
1	<i>Unexplained investment in stock</i>	<i>Rs. 4,01,05,860/-</i>
2	<i>NP of difference value</i>	<i>Rs. 11,68,690/-</i>
3	<i>Advances for bullion purchase</i>	<i>Rs. 1,61,74,000/-</i>
4	<i>For other future discrepancy</i>	<i>Rs. 5,97,450/-</i>
<i>Total</i>		<i>Rs.5,80,46,000/-</i>

As mentioned above, during the course of survey proceedings, the assessee had disclosed an amount of Rs.5,80,46,000/- as its undisclosed income for the year under consideration.

8. Considering the above findings of survey team, the assessing officer issued show cause notice to the assessee to explain the difference in stock, unexplained investment, net profit difference, advance for purchases and other discrepancy. In response to the notice of the assessing officer, vide, letter dated 28/11/2014, the assessee has made submissions giving clarification regarding the alleged difference in stock found during the course of survey proceedings. The same is reproduced as under:

"1. With reference to the above captioned subject, the assessee states that a survey operation u/s 133A of the Act was carried out at its premises on 25.02.2014 whereby the survey team has noted certain discrepancies in stock of Gold, silver and diamond on comparison of physical stock taken during the survey with stock as per books of the assessee. During the course of survey on the business premise of assessee, the Departmental authorities had taken physical stock and books stock of gold as under:

Table 1

Sr No.	Name of the Stock	Physical Stock in gms	Stock as per books (as per the report)in gms	Difference as per report in gms
		A	B	A-B
1	Total of 22 ct. Jewellery	46452.22	36110	(10342.22)
2	Total of 22 ct. Old Gold Jewellery	1425.78	0	(1425.78)
3	Total of 18 ct. gold and diamond jewellery	999.9	323.87	(676.03)
4	Total of 24 ct. gold	912.15	19762	18849.85
5	Total of 18 ct. branded jewellery	179.58	0	(179.58)

*Copy of the sheet is attached herewith vide **Annexure-A**.*

2. The assessee with utmost humility would like to draw your kind attention towards the mistakes that had crept in the noting made by the survey team while alleging said differences in the quantity of stock of all items as noted in table-A. Further, differences were also attributable because of punching errors and certain pending entries to be made in the books of account as on the date of survey i.e. 25.02.2014.

As to clarify in detail, assessee states as under:

3.1 First of all the assessee would like to clarify that the survey team has taken quantity of stock from the balance of 'Net capital stock' as appearing

in sheet namely 'Metal Balance Sheet of Gold Trading A/c as on 25.02.2014' (here in after referred as ' Metal stock sheet') and referred it to be stock as per books. Copies of all metal stock sheets are attached herewith vide **Annexure-B**.

'Metal Balance Sheet of Gold as on 25.02.2014' sheet provides for reconciliation of physical stock in assessee's premise (whether own or of third parties) with Assessee's stock as per books of accounts (assessee's own stock whether in own premise or outsider's premise). 'Net Capital Stock balance' as appearing in the said sheet refers to total own stock of the assessee, whether in the premise of the assessee itself or otherwise.

3.2 Stock as per trading account/Net capital stock as per metal stock sheet, does provide for status of the actual quantity of own stock only. Assessee, does not provide entries for stock received from third parties on work contract basis in its regular trading account rather it keeps separate account for the same. On completion of the work and reverting the stock back to the third parties, assessee squares off the said ledger account and only accounts job work income for the said metal stock work contract.

3.3 Physical Stock in premise of the assessee as taken by the survey team during the survey proceedings includes own stock of assessee lying with in the assessee's premise and stock of others eg. Stock of artisan/customers or other parties lying in assessee's premise.

3.5 During the year under consideration certain accounting entries were pending to be made in the books of account. There always remains a backlog of entries to be made in the books of account in case of every business; the assessee not being an exception. Further, in the business of jewellery and ornaments it is a matter of fact that 24 ct. gold is converted into lower grade ct. ie. 22 ct.,18 ct.,14ct. etc. for the purpose of manufacturing of ornaments and making it saleable in market. The assessee is also engaged in business of manufacturing of jewellery and ornaments for which it buys 24 ct. gold from market and then also utilize it for converting the same into various lower grade jewellery and ornaments. With above brief background the assessee states and clarifies as under with respect to differences in each grade of ct gold:

4. Clarification for Stock of 24 ct. Gold:

4.1 On perusal of the supra table, your good self will note that during the survey proceedings, quantity of the physical stock of 24 ct. was found for 912.15 grams and the quantity as per books was considered to be 19762.147 grams and accordingly survey team alleged for deficit of stock by 18849.85 grams (19762. 147 grams- 912. 15 grams).

4.2 In this connection, first of all the assessee would like to clarify that the survey team has noted quantity of 19762.147 grams from 'Net capital stock balance' of the 24ct Metal stock sheet and referred it to be stock as per books.

However, actual quantity of 24 ct gold as per books of accounts was 17634.951 grams, which may be noted from Stock account of Gold-24 ct namely 'Gold 24 Trading A/c' as maintained in regular books of accounts of the assessee. Copy of the Trading account is attached herewith vide Annexure-C for your good selfs immediate reference.

4.3 24ct metal stock for 2127.196 ct grams was sent to different Artisan on various dates for converting the same in to 22 ct metal stock. The said stock was received back too from the said artisan on conversion of the same in to 22ct metal stock. This may be verified from the copies of receipt and issue vouchers issued by the said parties, attached here with vide **Annexure-D**, which were also impounded during the course of survey.

On receipt of conversion of 24ct gold in 22ct gold stock for 2127.196 grams, the accountant was supposed to pass entry for transfer from 24 ct gold to 22 ct manufacturing account. However, he erred by passing an entry directly in 22ct trading account by referring the same to be 'stock received from Artisan'. This mistake of accounting is also very evident from the metal stock sheet of Gold-22 ct.

Accordingly, as the accounting entry was not passed properly the said stock of 2127.196 stands in reconciliation of metal sheet of both 24ct gold and 22ct gold.

4.4 As to narrate more precisely and figuratively, below chart is produced as to clarify entries appearing in metal stock sheet of 24ct gold as on 25.02.2014.

Table-2

Metal Balance Sheet of Gold-24 Trading A/c as on 25.02.2014			
	Particulars	Total Net Wt.	Remarks
A	Actual Stock in Premise	17634.951	This stock balance refers to stock in premise
			- Own (Assessee 's) - Others
B	Add:		
	Our Metal Stock with Party	0	This Stock balance refers to own Metal Stock lying with third party premise sent for conversion. (Stock of 2127.195 gram was received back, however, accounting entry for transferring the said stock to 22 ct manufacturing account was not passed appropriately) - Copy of Issue and Receipt vouchers are attached herewith vide Annexure-C .
	Our Metal Stock with		

	<i>Artisan</i>		
	<i>Mukesh Art Jewellers</i>	654.522	2127.195
	<i>R.R. Chain</i>	709.065	
	<i>ROSE GOLD</i>	763.609	
	Total		2127.195
C	Less :		
	<i>Party's Metal stock with us</i>	0	<i>This Stock balance refers to Metal Stock of third parties lying with in Assessee's Premise</i>
	<i>Artisan Metal Stock with us</i>	0	
	Total	0	
D	NET CAPITAL STOCK (A+B-C)	19762.147	<i>This stock balance refers to Assessee's own stock (only) lying in assessee's own premise or at third parties premise</i>

4.5 On nullifying the mistake made by the accountant i.e. of passing an entry directly in 22ct trading account by referring the same to be 'stock received from Artisan', the NET CAPITAL STOCK balance as per 24ct will also reconcile with books of accounts for 17634.951grams only. Accordingly, the deficit of stock as per the departmental working shall be recomputed at 16722.8 grams (17634.951 -912.15).

4.6 Further, more importantly it is submitted that there were certain pending entries to be made in the books of account as on the date of survey i.e. 25.02.2014 therefore the deficit of stock for 16722.8 grams was in fact, not entirely deficit.

Various entries for transfer of stock from 24ct gold to 22ct gold and 18ct gold were pending. This also shall be retreated from fact that in the 22ct and 18 ct gold also there were surplus of the stock was alleged. As the entries with respect to transfer of 24ct gold to 22ct gold and 18ct gold was pending, it has resulted into impression as on survey day that there were deficit in physical quantity of 24ct gold and surplus in physical quantity of 22ct and 18ct gold. On the date of survey, accounting entries for total 7469.30 gms. of 24 ct. gold in to 22ct gold , total 179.58 gms. of 24 ct. gold in to 18ct branded jewellery gold and total 676.04 gms. of 24 ct. gold in to 18ct gold trading account; were pending. Assessee accepts that bullion (24ct gold) to the extent of 8397.879gms were cash sales of bullion.

4.7 The table below shall explain the above explanatory submission figuratively too in concise manner:

Table 3

Statement showing reconciliation of stock of 24 ct. gold		
Particulars	Quantum in grams	Quantum in grams

	Net capital Stock as per Metal stock sheet as on 25.02.2014		19762.147
Less :	Correction of Entry for conversion of 24ct gold		2127.951
	Stock as per Trading account as on 25.12.2014 (Correct Net capital stock)		17634.951
Less :	Transfer to manufacturing Account (Pending accounting entries)		
	To 22 ct.	7469.301	
	To 18 ct. branded jewellery	179.58	
	To 1 Set. trading A/ c	676.04	
			8324.921
Less :	Cash sales of Bullion		8397.879
	Total Physical stock as on 25. 12.2014		912.15

4.8 Proceeds of sale from 8397.879 was utilized for making advances on various dates in total for Rs. 1.61 crore approx."

Clarification for stock of 22 ct. Gold Jewellery:

On perusal of the table-A supra, your good self will note that during the survey proceedings, quantity of the physical stock of 22 ct. gold was found for 46452.22 grams and the quantity as per books was considered to be 36110 grams. Accordingly, survey team alleged for surplus of physical stock by 10342.22 grams (46452.22 grams -36110 grams).

5.2 In this connection, first of all the assesses would like to clarify that the survey team has noted quantity of 36110 grams from the 'Net capital stock balance' of the 22ct Metal stock sheet and referred it to be stock as per books.

However, actual Quantity of 22 ct gold as per books of accounts was 38237.579 grams, which may be noted from Stock account of Gold-22 ct namely 'Gold 22 Trading A/c', as maintained in regular books of accounts of the assessee. Copy of the said Trading account is attached herewith **vide Annexure- E** for your good self's immediate reference.

5.3 As to narrate more precisely and figuratively, below chart is produced as to clarify entries appearing in metal stock sheet of 22ct gold as on 25.02.2014:

Table-4

Metal Balance Sheet of Gold-22 Trading A/c as on 25.02.2014			
Ref	Particulars	Total Net Wt.	Remarks
A	Actual Stock in Premise	38982.919	This stock balance refers to stock in premise Own (Assessee's) Others
B	Add:		
	Our Metal Stock with Party	0	This Stock balance refers to own Metal Stock lying with third party premise

	Our Metal Stock With Artisan (total)	0	
	Total	0	
C	Less :		
	Party's Metal stock with us	377.470	This Stock balance refers to Metal Stock of third parties lying with in Assessee's Premise.
	Artisan with us Metal Stock	2495.068	
	GGOGUJA RATGOLD CENTER PVT. LTD.	367.872	

	Mukesh Art Jewellers	654.522	2127.196	(Metal stock for 2127.196 grams was not stock received from artisan, rather said stock pertains to receipt of our own stock on conversion of the same from 24ct gold to 22ct gold, as the said stock was referred as 'Metal stock received from Artisan' it is appearing in reconciliation sheet, which needs rectification.)
	R R Chain	709.065		
	ROSE GOLD	763.609		
	Total			2872.538
D	NET CAPITAL STOCK (A+B-C)			36110.383
				This stock balance refers to Assessee's own stock (only) lying in assessee's own premise or at third party premise.

5.4 As explained in earlier paras 4.3 to 4.5, the accountant has made mistake by entering the metal stock of 2127.196 grams as stock received from artisan. Actually, the said stock pertains to own stock which was received back from artisan on conversion of the 24ct gold in to 22ct gold. Therefore, the said entry needs rectification.

5.5 Further, as may be noted from supra table, 22ct metal stock for 377.470 gram from various Parties/customers and 367.872 gram from artisan was received on work contract basis which were lying with in the premise of the assessee. As explained in earlier paras, stock as per trading account/Net capital stock as per metal stock sheet maintained in books does provide for status of the actual quantity of own stock only. Assessee does not provide entries for stock received from third parties on work contract basis in its regular trading account. On completion of the work and reverting the stock back to the third parties, assessee squares off the said ledger account and

only accounts job work income for the said metal stock work contract. The survey team has erred in comparison of the Net capital stock (own stock at premise or otherwise) with Physical stock (stock at premise own or otherwise).

5.6 In furtherance to the above, it is submitted that there were certain pending entries to be made in the books of account as on the date of survey i.e. 25.02.2014, for total 7469.301 gms. of 24 ct. gold to 22ct gold manufacturing account.

5.7 The table below shall explain the above explanatory submission figuratively too in concise manner:

Table-5

Statement showing reconciliation of stock of 22 ct. gold	
Particulars	Quantum in grams
NET CAPITAL STOCK as on 25. 02.2014 as per Metal Stock sheet	36110.383
Add: Rectification of entry for Artisan metal stock with us	2127.196
Stock as per Trading account maintained in books	38237.579
Add: Conversion of stock from 24 ct. to 22ctfor which entries were pending	7469.301
Total stock as per books after incorporating pending entries	45706.88
Add: Party Metal stock and Artisan metal stock at premise (367.872 + 377.470)	745.342
Total Physical stock in premise as on 25.12.2014	46452.22

5.8 Accordingly, there was no excess of stock in 22ct jewellery.

6. Clarification for stock of 18ct branded jewellery and 18ct gold jewellery Account :

6.1. The survey team has alleged there to be excess of stock for 179 gram and 676.03 gram in 18ct branded jewellery and 18ct gold jewellery respectively. In this connection, the assessee states that there was no such excess of physical stock in actual in 18ct gold. As the entries with respect to conversion of 24ct gold to 18ct gold were pending, it has led to impression that there was excess of physical stock. On making due entries in books of accounts, alleged excess of physical stock will not remain as such.

7. Clarification for Stock of 22 ct. Old Gold Jewellery:

7.1 During the survey proceedings, the physical stock of 22 ct. old gold was found for 1425.78 grams and the quantity as per books was considered to be NIL and accordingly an excess stock of 1425.78 gms was recorded by survey team.

7.2 On the contrary, the actual position of the stock as per the books of A/cs is 492.44 gms according to which the excess stock would come down to 933.34 gms(1425.78-492.44). This fact may be verified by your honour on

*perusal of the impounded stock sheet from books of accounts naming 'Metal Balance sheet of old Gold-22 Trading A/c, as on 25.02.2014'. Copy of the said impounded stock sheet is attached herewith vide **Annexure- B** for your honours immediate reference.*

7.3 On perusal of the stock sheet for Gold-22 Ct., your honour shall note that the survey team has erred in not considering the balance of own stock of the assessee available as per books. Therefore, the assessee asks your good honour to consider this humble plea and take this matter on record.

The assessee hopes that the above submission would suffice the requirements to make good the discrepancies.”

9. The assessing officer, after going through the computation of income and details submitted by the assessee, observed that the assessee- firm has offered following additional income for taxation out of undisclosed income of Rs.4,01,05,860/- on account of unexplained investment in stock of gold, diamond and silver ornaments. The details of the same are as follows:

<i>22ct. Old gold.</i>	<i>Rs.26,49,750/-Offered to tax partially out of total disclosure of Rs.40,47,789/-</i>
<i>Silver trading</i>	<i>Rs.7,02,894/- Offered to tax fully</i>
<i>Silver ornaments</i>	<i>Rs.10,40,357/- Offered to tax fully</i>
<i>Diamond</i>	<i><u>Rs.8,23,728/-</u> Offered to tax fully</i>
<i>Total</i>	<i><u>Rs.52,16,729/-</u></i>

10. Further, assessing officer also noted that as per the submission of the assessee, during the course of assessment proceedings, the assessee has accounted net profit at 2% on cash sales of un-reconciled bullion (24 ct. gold) of 8397.879 grms, amounting to Rs.5,10,922/-. This is against differential stock of bullion (24 ct. gold) of 18849.85 grms, found during the course of survey proceedings.

11. The assessing officer also observed that the assessee has offered an amount of Rs.52,16,729/-, out of Rs.4,01,05,860/- and net profit of

Rs.5,10,922/- on unreconciled bullion (24 ct. gold) of 18849.85 grms for taxation in the return filed for the year under consideration.

12. After going through the survey findings, written submission of assessee, and documents/evidences filed by the assessee, the assessing officer made the following additions:

(i) In respect of 24 Carat, the assessing officer observed that during the course of survey proceedings, it has been noted that there was a difference in stock of 24 Ct. Gold by 18849.85 gms valued at Rs.5,84,34,535/-i.e. 912.15 gms (physical stock) less 19762.00 (as per books). During the course of assessment proceedings, the assessee has claimed that there are various accounting entries for transferring part of bullion stock to 22 ct., manufacturing account, which were not passed appropriately and further there is transfer of bullion to manufacturing account of 22 ct. gold jewellery, 18 ct. branded jewellery and 18 ct. trading A/c., which were pending for accounting entries in the books. Therefore, during the course of assessment proceedings, assessing officer issued a show cause notice on 14/12/2016, relevant portion of the same is reproduced in assessment order page nos. 14 to 16. In response to the above show cause notice, the assessee submitted its reply, which is reproduced by the assessing officer on page no.16 to 17. After considering the reply of the assessee, the assessing officer held that assessee has failed to submit any supporting evidences regarding issue of bullions to parties for manufacturing into 22 ct. jewellery, 18 ct. jewellery and 18 ct. branded jewellery. The assessing officer noted that “Gold-24 Trading A/c” as on 25/02/2014, shows actual stock in the assessee's premises at 17634.951 grams. Therefore, the assessee's contention about pending conversion entries is nothing but an

afterthought. No documentary evidences whatsoever are submitted to substantiate the claim of the assessee. The assessee has tried to justify the same with details of labour bills submitted during the course of assessment proceedings; however, the assessee has failed to submit any documentary evidences regarding conversion of 24 ct. gold into only 22 ct. jewellery, 18 ct. jewellery and 18 ct. branded jewellery. The assessing officer also noted that assessee has not submitted labour bills. Therefore, the contention put forth by the assessee in respect of 24 ct. gold bullion of 8324.921 grams was not accepted by the assessing officer. Hence, assessing officer has considered the same as sold by the assessee during the year under consideration. Accordingly, value of 24 ct. gold stock of 8324.921 grams was worked out by the assessing officer as under:

$$\frac{8324.921 \text{ gms.} \times \text{Rs.}58434535/- \text{ (value as determined)}}{18849.85 \text{ gms. (Difference found in stock)}} = \text{Rs.}2,58,07,255/-$$

Considering the facts, as mentioned above, net profit of 2% of Rs.2,58,07,255/-, which comes to Rs.5,16,145/- was added by the assessing officer to the total income of the assessee treating the same as undisclosed income.

(ii) In respect of 22 Ct. Jewellery, the assessing officer observed that during the course of survey proceedings, it has been noted by survey team that there was a difference in stock of 22 Ct. Gold Jewellery by 10342.22 gms, valued at Rs.3,14,19,664/- i.e. 46452.22 gms (physical stock) less 36110.00 gms (as per books). During the course of assessment proceedings, vide show cause notice dated 14/12/2016, the assessee was asked to submit supporting documentary evidences for incorporating pending entries. Further, the assessee was also asked to explain as to why its contention that pending entries are remained to be

entered, should not be rejected. In response, vide letter dated 23/12/2016, the assessee has submitted its reply, before the assessing officer, the relevant portion of the same is reproduced by the assessing officer on page no.20 to 22 of the assessment order. The assessing officer after going through the submission of the assessee observed that assessee has neither submitted any evidences nor furnished any satisfactorily explanation/justification regarding conversion of 24 ct gold stock of 7469.301 grams into 22 ct. jewellery. Therefore, the contention put forth by the assessee in respect of conversion in 22 ct. gold jewellery of 7469.301 grams was not accepted by the assessing officer. Therefore, excess 22 ct. gold found of 7469.301 grams during the course of survey proceedings was considered, as unexplained investment in stock. The value of unexplained stock of 22 ct. gold of 7469.301 grams was worked out by the assessing officer as under:

$$\frac{7469.301 \text{ gms.} \times \text{Rs.}31419664/\text{- (value as determined)}}{10342.22 \text{ gms. (Difference found in stock)}} = \text{Rs.}2,26,91,736/\text{-}$$

Considering the above facts and circumstances of the case, an amount of Rs.2,26,91,736/- was considered by the assessing officer, as unexplained investment in stock of 22 ct. gold and therefore, the same was added to the total income of the assessee.

(iii) In respect of 18 ct Gold Jewellery and 18 Ct branded jewellery, the assessing officer observed that during the course of survey proceedings, it was found by survey team that there was a difference in stock of 18 Ct. Gold and Diamond Jewellery by 676.04 gms. valued at Rs.16,22,484/- i.e. 999.90 gms (physical stock) less 323.87 gms (as per books). Regarding 18 Ct. branded Jewellery, physical stock was at 179.58 gms. valued at Rs.4,48,950/-. Accordingly, vide show cause notice dated 14/12/2016, the assessee was asked to submit the

documentary evidences for pending entries with respect to 24 ct. gold to 18 ct. gold and was also asked to explain as to why contention of the assessee that pending entries were remained to be entered, should not be rejected. In response, vide letter dated 23/12/2016, the assessee had stated before the assessing officer that *“18 ct. branded gold ornaments which were converted from bullion as given in table attached in part no. 1 above”*. However, the assessing officer rejected the contention of the assessee and observed that assessee has neither submitted evidences nor furnished any satisfactorily explanation/justification regarding conversion of 24 ct gold stock into 18 ct. jewellery and 18 ct. branded jewellery. Therefore, the contention put forth by the assessee in respect of conversion of 24 ct. gold into 18 ct. jewellery and 18ct. branded jewellery was rejected by the assessing officer. Considering these facts, the value of discrepancies in stock in 18 ct. gold and 18 ct. branded jewellery found during the course of survey amounting to Rs.16,22,484/- and Rs.4,48,950/- respectively, were considered as unexplained investment in stock and therefore, the same were added to the total income of the assessee.

(iv) In respect of advances given for purchases of bullion of Rs.1,61,74,000/-, the assessing officer observed that during the course of survey proceedings u/s 133A of the Act, a diary annexed, as Annexure A-1/4, was found and impounded, the said diary contained figures mentioned against various dates for which the assessee was asked to explain in Question No. 59. In response to this question, Shri Deepak Chokshi, partner of assessee has stated that this diary was maintained by him in his own handwriting. The Deepak Choksi in his statement stated that the figures against various dates shows the advances given to purchase material to various persons. Thus, the

unaccounted bullion purchase in cash for the F.Y. 2013-14, as gathered from the diary, as annexed in Annexure A-1/4 from Page 1 to 7 was of Rs.1,61,74,000/-. In Ans. to Que. No. 60, Sh. Deepak Choksi admitted that these purchases were not entered in the regular books of accounts of the assessee-firm. The assessee had declared Rs.1,61,74,000/-, as undisclosed investment for purchase of stock in trade and offered to pay tax on it. Accordingly, during the course of assessment proceeding, show cause notice was issued by the assessing officer on 14/12/2016, relevant portion of the same is reproduced as under:

“As per your submission, proceeds of sale from un-reconciled 24ct gold of 8397.879 grams was utilized for making advances on various dates in total for Rs.1.67 crore approx. As per the diary annexed, as Annexure -A-1/4 found and impounded during the survey operation u/s. 133A of the Act, unaccounted bullion purchases in cash from page 1 to page 7 is Rs.1,61,74,000/-. In answer to question No. 60, Shri Deepak Choksi, partner of the assessee firm admitted that this purchase are not entered in the regular books of accounts of the firm and the assessee declared Rs.1,61,74,000/- as undisclosed investment for purchase of stock in trade and offered to tax. Hence, your submission is nothing but an afterthought in the absence of details such as dates and amount of sales of 24ct gold and name & address of the parties to whom sold. Hence, you are asked to explain as to why your contention that advances of material purchases were made out of sale of 24ct gold should not be rejected.

The diary which is impounded as Annexure-A-4 having page Nos. 1 to 7 has certain code names which you have stated that these are your vendors for bullion. You are asked to submit the name & address of these parties to whom advances was made with supporting documentary evidences.”

In response, vide letter dated 23/12/2016, the assessee has submitted its reply, before assessing officer, which is reproduced as under:

“During the course of recording the statement u/s 133A out deceased partner Deepak R Choksi had given the following statement (this diary was maintained by me in my handwriting and of each of the pages 1 to 7 have given advances for purchases of bullion and the total of such advances comes to Rs.1,61,74,000/- during the year 2013-2014.

In our clarification above in point no. 1 we have accepted unaccounted sale of bullion to the tune of Rs. 2,55,46,125/- this advances have been made from these proceeds.”

However, the assessing officer has rejected the contention of the assessee and observed that assessee has made advances of Rs.1,61,74,000/- in cash for bullion purchase and this fact is never denied by the assessee. It is also a fact that the assessee has failed to furnish any explanation regarding sources of aforesaid amount with documentary evidence. Since the assessee was failed to furnish any documentary evidences, sources of advances of Rs.1,61,74,000/- remain unexplained. Therefore, an amount of Rs.1,61,74,000/- was treated as unexplained investment for purchase of stock-in-trade and therefore, the same was added to the total income of the assessee.

(v) The assessing officer also observed that during the course of assessment proceedings, ongoing through details filed by the assessee, it was observed that there were expenses in which personal element cannot be ruled out. However, no disallowance on account of expenses of personal nature and for inadequate and complete supporting of cash expenses was being made as the same was covered by Rs.5,97,450/- i.e. additional disclosure made during the course of survey proceedings to cover any such discrepancy. Therefore, the sum of Rs.5,97,450/- was added to the total income of the assessee, which is agreed to by the AR of the assessee, vide order sheet noting of assessing officer dated 26/12/2016.

13. Therefore, the summary of various additions made by the assessing officer, are as follows:

- (i) In respect of 24 Carat, Rs. 5,16,145/-
- (ii) In respect of 22 Ct. Jewellery Rs.2,26,91,736/-
- (iii) In respect of 18 ct Gold Jewellery Rs.16,22,484/-
And 18 Ct branded jewellery Rs.4,48,950/-

- (iv) In respect of advances given for purchases of bullion of Rs.1,61,74,000/-
- (v) Disallowance of Expenses Rs.5,97,450/-.

14. Aggrieved by the above additions made by the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly deleted the addition made by the Assessing Officer. Against those additions, which are partly deleted by Id CIT(A), the Revenue is in appeal before us. Against those additions, which are partly sustained by Id CIT(A), the Assessee is in appeal before us.

15. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Since the issues raised in these two cross appeals are interconnected and mix; therefore, we shall adjudicate Revenue's grounds and Assessee's grounds of appeal together. Learned Counsel for the assessee relied on the submission made during the appellate proceedings. About Stock of 24 ct Gold, the Id Counsel states that the survey team has noted quantity of 19762.147 grams from the 'Net capital stock balance' of the 24ct Metal stock sheet. However, actual quantity of 24 ct gold as per books of accounts was 17634.951 grams, which may be noted from Stock account of Gold-24 ct namely 'Gold 24 Trading A/c' as maintained in regular books of accounts of the assessee. The 24ct metal stock for 2127.196 ct grams was sent to different Artisan on various dates for converting the same in to 22 ct metal stock. The said stock was received back too from the said artisan on conversion of the same in to 22ct metal stock. On receipt of conversion

of 24ct gold in 22ct gold stock for 2127.196 grams, the accountant was supposed to pass entry for transfer from 24 ct gold to 22 ct manufacturing account. However, he erred by passing an entry directly in 22ct trading account by referring the same to be 'stock received from Artisan'. This mistake of accounting is also very evident from the metal stock sheet of Gold-22 ct. The Id Counsel also relied on the reconciliation submitted before Id CIT(A), which is reproduced below:

Statement showing reconciliation of stock of 24 ct. gold			
	Particulars	Quantum in grams	Quantum in grams
	<i>Net capital Stock as per Metal stock sheet as on 25.02.2014</i>		19762.147
<i>Less :</i>	<i>Correction of Entry for conversion of 24ct gold</i>		2127.951
	Stock as per Trading account as on 25.12.2014 (Correct Net capital stock)		17634.951
<i>Less :</i>	<i>Transfer to manufacturing Account (Pending accounting entries)</i>		
	<i>To 22 ct</i>	7469.301	
	<i>To 18 ct. branded jewellery</i>	179.58	
	<i>To 18 ct. trading A/c</i>	676.04	
			8324.921
<i>Less :</i>	<i>Cash sales of Bullion</i>		8397.879
	<i>Total Physical stock as on 25.12.2014</i>		912.15

Proceeds of sale from 8397.879 gms was utilized for making advances on various dates in total for Rs. 1.61 crore approx.

16. About 22 ct. Gold Jewellery, Id Counsel argues that during the survey proceedings, quantity of the physical stock of 22 ct. gold was found for 46452.22 grams and the quantity as per books was considered to be 36110 grams. Accordingly, survey team alleged for surplus of physical stock by 10342.22 grams (46452.22 grams - 36110 grams). The Id Counsel clarifies that the survey team has noted quantity of 36110 grams from the 'Net capital stock balance' of the 22ct Metal

stock sheet and referred it to be stock as per books. However, actual quantity of 22 ct gold as per books of accounts was 38237.579 grams, which may be noted from Stock account of Gold-22 ct namely 'Gold 22 Trading A/c' as maintained in regular books of accounts of the assessee. The Id Counsel stated that the accountant has made mistake by entering the metal stock of 2127.196 grams as stock received from artisan. Actually, the said stock pertains to own stock which was received back from artisan on conversion of the 24ct gold in to 22ct gold. Therefore, the said entry needs rectification. The Id Counsel further states that stock as per trading account/Net capital stock as per metal stock sheet maintained in books does provide for status of the actual quantity of own stock only. Assessee does not provide entries for stock received from third parties on work contract basis in its regular trading account. On completion of the work and reverting the stock back to the third parties, assessee squares off the said ledger account and only accounts job work income for the said metal stock work contract. The survey team has erred in comparison of the Net capital stock (own stock at premise or otherwise) with Physical stock (stock at premise own or otherwise).It is submitted that there were certain pending entries to be made in the books of account as on the date of survey i.e. 25.02.2014 for total 7469.301 gms of 24 ct. gold to 22ct gold manufacturing account. The Id Counsel relied on the reconciliation submitted before Id CIT(A), which is reproduced below:

Statement showing reconciliation of stock of 22 ct. gold		
	Particulars	Quantum in grams
	NET CAPITAL STOCK as on 25.02.2014 as per Metal Stock sheet	36110.383
Add:	Rectification of entry for Artisan metal stock with us	2127.196
	Stock as per Trading account maintained in books	38237.579

Add:	Conversion of stock from 24 ct. to 22ct for which entries were pending	7469.301
	Total stock as per books after incorporating pending entries	45706.88
Add:	Party Metal stock and Artisan metal stock at premise (367.872 + 377.470)	745.342
	Total Physical stock in premise as on 25.12.2014	46452.22

Therefore, Id Counsel contended that there was no excess of stock in 22ct jewellery.

17. About stock of 18ct branded jewellery and 18ct gold jewellery Account, the Id Counsel argued that survey team has alleged that there to be excess of stock for 179 gram and 676.03 gram in 18ct branded jewellery and 18ct gold jewellery respectively. In this connection, the assessee states that there was no such excess of physical stock in actual in 18ct gold. As the entries with respect to conversion of 24ct gold to 18ct gold were pending, it has led to impression that there was excess of physical stock. On making due entries in books of accounts, alleged excess of physical stock will not remain, therefore assessing officer was not justified in making the addition.

18. About addition on account of advances of Rs.1,61,74,000/-; the Id Counsel argued that it was accepted by Shri Deepak Choksi that there was a cash sale of bullion for 8397.879 grams and its proceeds were also utilized for making advances for purchase of bullion on various dates in total for Rs.1,61,74,000/-. While filing return of income for the year under consideration, the assessee has already included sale proceeds for 8397.879 grams in total for Rs.2,55,46,125/- in its books of accounts and thereby duly offered said receipts to tax. This much sale proceeds already been included in trading account and been offered to tax; hence invoking of separate addition for advances made in total

for Rs.1.61 crore approximate is unjustifiable. When source itself has been offered to tax again taxing application of the same source is not permissible and thus it amounts to double addition.

19. About disclosure for Rs.5,97,450/-,the Id Counsel argues that assessing officer (AO) has ignored the basic fact that during the survey proceeding a disclosure for Rs. 5,97,450/- was made by assessee so as to cover up any discrepancy. This much disclosure was also sufficient so as to cover up alleged discrepancy of in labour bill charges incurred for conversion of 1663.71 grams in to 22 ct gold and further for 18 ct. conversions. The said amount was disclosed by the assessee to cover shortcoming in labour bills. Hence even if, allegation was that the assessee couldn't produce labour expenses for certain portion of conversion, there was enough disclosure of Rs.5,97,450/- so as to cover up absence of labour expenses. Thus, Id Counsel also stated that assessing officer has made additions u/s 69, while not even finding any incriminating material found so as to support such notion. It has been settled position of law that in absence of incriminating material additions should not be made.

20. On the other hand, Learned DR for the Revenue argued that the decision of the Id. CIT cannot be accepted because of the following reasons:

- (i) The assessee is not maintaining day to day stock register.
- (ii) Why the assessee is purchasing in cash when it is well known that any business purchase or expenditure made in cash attracts the provision of section 40A(3) of the I.T. Act.
- (iii) If the telescopic benefit is given to the assessee then, first, corresponding purchase for unaccounted sale of Rs.2,55,46,125/-

should have been accounted for. The Id Counsel for the assessee could not throw any light on this aspect.

(iv) In view of the above deliberation, the following additions made by the AO may kindly be sustained

(i)	<i>Net profit on cash sale of bullion</i>	5,16,145/-
(ii)	<i>Unexplained investment</i>	2,2691,736/-
(ii)	<i>Unexplained investment</i>	16,22,484/-
(iv)	<i>Unexplained investment</i>	4,48,950/-
(v)	<i>Unexplained investment for Purchase in stock-in-trade</i>	1,61,74,000/-
(vi)	<i>Disallowance out of expenses</i>	<u>5,97,450/-</u>
	Total	Rs.4,20,50,765/-

The Id DR stated that above additions were correctly made by the Assessing Officer. Apart from this, the Id DR submitted before the Bench, written submission, which is exact copy paste of findings of the assessing officer. Therefore, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

21. We have considered the submissions of both the parties. The Id Counsel for the assessee submitted the followings documents and evidences before the Bench:

- (i) Copy of return of income along with computation of income for AY.2014-15 (vide Pb.1 to 4)
- (ii) Copy of audited financial statements for AY.2014-15 (vide Pb.5 to 50)

- (iii) Copy of statement of Shri Deepak Chokshi recorded during survey proceeding as on 25.02.2014 (vide Pb.51 to 73)
- (iv) Copy of diary annexed as A-1/4 containing advances given to purchase material (vide Pb.74 to 80)
- (v) Copy of reply filed dated 28.11.2014 during the course of assessment proceedings along with following annexures (vide Pb.81 to 89):
- (vi) Copy of sheet showing difference in stocks submitted during the course of assessment as Annexure-A (vide Pb.90 to 91)
- (vii) Copy of all metal stock sheets submitted during the course of assessment as Annexure-B (vide Pb.92 to 97)
- (viii) Copy of Trading A/c. of 24 ct gold submitted during the course of assessment as Annexure-C (vide Pb.98)
- (ix) Copy of receipt voucher issued by the artisan namely (Rose Gold, Mukesh Art Jewellers, R. R. Chains) regarding conversion of 24 Ct gold into 22 Ct gold submitted during the course of assessment as Annexure-D (vide Pb.99 to 101).
- (x) Copy of trading A/c. of 22 Ct gold submitted during the course of assessment as Annexure-E (vide Pb.102).
- (xi) Copy of invoices of GGC Gujarat Gold Centre showing artisan stock (22 Ct metal stock) received on work contract basis lying in our premises (vide Pb.103 to 104).
- (xii) Copy of labour bills showing total quantity conversion from 24 Ct gold into 22 Ct gold (vide Pb.105 to 121).

22. We have examined these documents and evidences and find merit in the submission of Id Counsel. We note that assessee is a partnership firm and engaged in the business of trading of gold and manufacturing and selling of gold jewellery. There was a survey conducted in the business premises of assessee on 25.02.2014. During the course of survey in the business premises of assessee, there was a mismatch found in the physical stock and stock as per books of account of assessee. The difference as noted by the Investigating Wing, is summarized as under:

Sr.No	Item description	Stock		Difference (in grms)	Difference in value
		As per physical (in gms)	As per book (in gms)		
1	Total 22 CT jewellery	46452.22	36110.00	10342.22	31419664
2	Total 22 CT old gold jewellery	1425.78	--	1425.78	4047789
3	Total 18 CT gold jewellery	999.90	323.87	676.04	1622484
	Diamond jewellery	76.68	59.20	17.48	823728
4	Total 24 CT gold	912.15	19762.00	18849.85	58434535
5	Total 18 CT branded jewellery	179.58	19762.00	18849.85	58434535
6	Total silver bar	18550.00	3269.70	15280.30	702894
7	Silver ornaments	126866.00	95340.22	31525.78	1040351

In response to above discrepancies found during the course of survey action, the assessee has offered additional undisclosed income of Rs.52,16,729/- which has been accepted by the Assessing Officer on page no. 13 in para-4.1.1 of assessment order, which is reproduced hereunder:

“4.1.2 During the course of assessment proceedings, on going through the computation of income and details submitted by the assessee, it is seen that the assessee firm has offered following additional income for taxation out of undisclosed income of Rs.4,01,05,860 on account of unexplained investment in stock of gold, diamond and silver ornaments:

22 CT old gold	Rs.26,49,750	Offered to tax partially out of total disclosure of Rs.40,47,789
Silver trading	Rs.7,02,894	Offered to tax fully
Silver ornaments	Rs.10,40,357	Offered to tax fully

<i>Diamond</i>	<i>Rs.8,23,728</i>	<i>Offered to tax fully</i>
<i>Total</i>	<i>Rs.52,16,729</i>	

4.1.3 Further, as per the submission of the assessee, during the course of assessment proceedings, the assessee has accounted net profit at 2% on cash sales of unrecorded bullion (24 CT gold) of 8397.879 grms. amounting to Rs.5,10,922/-. This is against differential stock of bullion (24 ct gold) of 18849.85 gms. Found during the course of survey proceedings.”

23. Now coming to the assessee’s and Departmental ground-wise adjudication. We note that ground No.1 of assessee’s appeal and corresponding ground No.2 of Departmental appeal are interconnected and mix, which are reproduced for ready reference as under:

Assessee’s ground No.1:

“1.In law and in the facts and circumstances of the assessee’s case, the Ld. CIT(A) has grossly erred in confirming disallowance of Rs.50,54,350/- out of total disallowance of Rs.2,26,91,736/- on account of unexplained investment in CT gold as alleged by the Ld. Assessing Officer”

Revenue’s ground No.2:

“2.On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting addition on account of unexplained investment of Rs.1,76,37,385/- out of total addition of Rs.2,47,63,170/- by stating that the assessee has produced labour bills of conversion in respect of balance gold from 24 CT to 22 CT gold and more so that such bills were pertaining to period to the date of survey, payment were made to labour prior to survey date and TDS was deducted.”

24. We note that during the course of survey physical 46452.22 gms jewellery of 22 Ct. was found. However, as per book 36110 gms of 22 Ct was recorded. Therefore, the difference of 10342.22 gms (46452.22 gms- 36110 gms), worth of Rs.3,14,19,664/- (10342.22 gms x Rs. 3038) was to be explained by the assessee (value per gms Rs. 3038). Against such difference assessing officer (AO) during the course of assessment proceedings has accepted explanation of assessee to the extent of 2872.538 gms and no addition has been made. However, with respect to the balance that comes to 7469.301 gms (10342.22 - 2872.538) the assessee filed the appeal before ld CIT(A). The ld

CIT(A) restricted the addition from 7469.301 gms to 1663.671 gms. Therefore, the Assessee as well as Revenue, both are in appeal before us.

25. The assessee is in appeal for addition confirmed by CIT(A) for Rs. 50,54,351 for 1663.671 gms. This difference has been confirmed by CIT(A) for the reason that assessee could not produce the labour bills of conversion of 24 Ct. gold into 22 Ct. gold. In this regard, it is important to note that on the date of survey, the assessee was having excess stock, as per books of accounts of 18,849.85 grams of 24 carats gold. The assessee has also pointed out to the lower authorities that the excess stock of 24 carats was converted into 22 carats, since the latter is used for manufacturing gold jewelry. However, CIT(A) has given a relief to the extent of difference of 3665.53 gms, worth Rs. 1,76,37,385/- for the reason that assessee had substantiated through copy of the Labour bills provided during assessment and appellate proceedings. The CIT(A) has accepted, the proposition of conversion of 24 carat gold into 22 carats only to the extent labour invoices and payment details were produced before him. Against this, the Ld. Counsel for the assessee has pointed out that the addition is uncalled for since it was already having excess stock of 24 carats as per the books of accounts which was converted into 22 carats. The Ld. Counsel also submitted that the Books of accounts were audited and have not been rejected by the revenue authorities. Alternatively, it was also pointed out that the only disallowance that should be made is towards the labour expenses incurred for conversion of 24 carats into 22 carats gold. It was also pointed out that the assessee had *suo moto* made disallowance at 2% on sale of 24 carats gold of Rs.5,10,922/- which would be sufficient in covering the conversion charges. Based on this factual position, the

addition for Rs.50,54,351/- for 1663.671 gms, as confirmed/ sustained by the Ld. CIT(A) is hereby deleted.

26. In the result, Assessee's ground No.1 is allowed, whereas Revenue's ground No.2 is dismissed.

27. Now coming to the assessee's ground No. 1.2, which is reproduced below for ready reference as under:

"1.2 In law and in the facts and circumstances of the assessee's case, the Learned CIT(A) has grossly erred in confirming disallowance of Rs. 16,22,484/- on account of unexplained investment in 18 Ct. gold as alleged by the learned Assessing Officer."

28. We note that during the course of survey, physical stock of 999.90 gms of 18 Ct. jewellery was found. However, as per book, this stock was 323.87 ct. Therefore, the difference of 676.03 gms (999.90 ct- 323.87 ct), worth of Rs. 16,22,484/- (676.03 gms x Rs.2400) was found to be unexplained (value per gms Rs. 2400) by the assessing officer. The assessee could not produce the Labour bills of conversion for 24 Ct. gold to 18 Ct. gold and therefore the Learned AO and CIT(A) both has confirmed this addition. The Ld. Counsel of the assessee, has again reiterated that it was in possession of excess stock of 24 carats of gold as per books of accounts which was later converted into 22 carats and 18 carats, as per the business requirements. Therefore, out of the available stock of 24 carats gold, the assessee had sent it for conversion into 18 carats. However, the assessing officer (AO) as well as the Commissioner appeal rejected this argument in absence of any labour bills/ invoices. The arguments put forth by the Ld. Counsel were on similar lines as above, that is, with respect of excess stock of 22 carats gold. Further the Ld. Counsel has also reiterated that the books of accounts have been audited and not rejected by the revenue authorities.

Accordingly, the Ld. Counsel prayed that the entire addition should be deleted. Alternatively, the Ld. Counsel of the assessee also pointed out that the addition, if any, should be restricted to the extent of unexplained labour expenses and that such disallowance has already been made on adhoc basis by the assessee in its return of income. We have examined the facts narrated by Ld Counsel and noted that no disallowance is called for. Therefore, we delete the addition of Rs.16,22,484/-.

29. In the result, ground No.1.2 raised by the assessee is allowed.

30. Now coming to the ground Nos. 1.3 and 1.4 of the Assessee and Ground No. 1 of Department, which are interconnected and mix, therefore, we shall adjudicate them together:

Assessee's Ground Nos.1.3 and 1.4:

"1.3 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in confirming disallowance of Rs.4,48,950/- on account of unexplained investment in 18 ct branded jewellery as alleged by the learned assessing officer"

"1.4 In law and in the facts and circumstances of the assessee's case, the learned CIT(A) has grossly erred in confirming disallowance of Rs. 4,48,950/-, on account of unexplained investment in 18 Ct. branded jewelry as alleged by the learned Assessing Officer."

Department's Ground No. 1:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in restricting addition on account of net profit on cash sale of bullion to Rs.1,56,198/- thereby allowing a relief to the assessee to the tune of Rs.3,59,947/- without appreciating the facts that assessee could not prove conversion of 24 Ct gold to lower 22 Ct. grade conversion for 8324.971 grams gold."

31. We note that Ld. Counsel again reiterated the same facts that the excess physical stock of 24 Ct. gold, as against physical stock of 24 Ct. gold jewelry was utilized for procuring this branded jewelry. The Ld.

Counsel also pointed out with help of ledger account, wherein the transfer of 24 carat gold for conversion into 18 carat branded jewellery was reflected. It is also a matter of fact that the assessee has purchased 24 carat gold from accounted funds only. Therefore, based on this factual position, we allow Assessee's Ground Nos.1.3 and 1.4 and dismiss Revenue's Ground No. 1.

32. In the result, Assessee's Ground Nos.1.3 and 1.4 are allowed whereas Revenue's Ground No. 1 is dismissed.

33. Ground No. 1.5 raised by the assessee is explanation and argument of assessee, therefore does not require adjudication.

34. In ground No.2 of the assessee, the disclosure made by the assessee at Rs.5,97,450/- is mentioned. This disclosure was accepted by the assessee and assessing officer also made addition to the tune of Rs.5,97,450/-, hence we confirm the addition made by the assessing officer.

35. In the result, ground No.2 raised by the assessee is dismissed.

36. Ground No.3 raised by the assessee, was not argued by the Id Counsel therefore does not require adjudication.

37. Ground No.4 raised by the assessee relates to levy of penalty under section 271(1)(c) of the Act, which is premature in nature, hence does not require adjudication.

38. Now, we shall take ground No.3 raised by the Revenue, which is reproduced below for ready reference:

"3. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in deleting addition on account of unexplained investment

for purchase in stock-in-trade of Rs.1,61,74,000/- by stating that source of income for Rs.2.55 crore has been offered to tax and therefore separate addition of Rs.1,61,74,000/- is unwarranted. However, the Ld. CIT(A) has failed to appreciate the fact that the cash advance of Rs. 1,61,74,000/- were admitted by the partner of the assessee as a diary was found and impounded during the course of survey proceeding where in specific details containing date and amounts of advance payments made were maintained.”

39. We have heard both the parties. The facts of the assessee`s case have been narrated by us in above para therefore we do not reiterated the facts of the assessee`s case again for the sake of brevity. Learned Counsel for the assessee argued that vide clarificatory submission, it was accepted by Shri Deepak Choksi that there was a cash sale of bullion for 8397.879 grams and its proceeds were also utilized for making advances for purchase of bullion on various dates in total for Rs. 1,61,74,000/-. While filing return of income for the year under consideration assessee has already included sale proceeds for 8397.879 grams in total for Rs.2,55,46,125/- in its books of accounts and thereby duly offered said receipts to tax. This much sale proceeds already been included in trading account and been offered to tax; invoking of separate addition for advances made in total for Rs. 1,61,74,000/- is unjustifiable. When source itself has been offered to tax therefore again taxing application of the same source is not permissible. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

40. We have considered the submission of both the parties. We note that assessee -firm itself has disclosed sale of bullion in cash for 8397.879 grams and also submitted that out of cash sale of bullion only further advances for purchase of bullions were made. It is contended by the Authorized Representatives that the assessing officer (A.O.) has not denied the declared position of the assessee that there was sale of

bullion in cash for 8397.879 grams. It is quite evident from the records that while filing return of income for the year under consideration, assessee has already included sale proceeds for 8397.879 grams in total for Rs.2,55,46,125/- in its books of accounts, and thereby, duly offered said receipts to tax. During appellate proceedings, before Id CIT(A) the assessee had contended that A.O. has not given any telescoping for said source against the application of funds for Rs.1,61,74,000/-. It was forcefully contended that when source itself has been offered to tax again taxing application of the same source is not permissible. Further, assessee has contended before Id CIT(A) that on the one hand the A.O. has not denied the fact that there is a sale of bullion in cash for 8397.879 grams and the fact that assessee has already included Rs.2.55 crore approx., sale proceeds in its trading account, thereby the AO has also identified that there was enough source of funds for Rs.2.55 crore from which the assessee could have provided advances for Rs. 1,61,74,000/-, however, on other hand he has denied to give telescoping for said source against the application funds for Rs. 1,61,74,000/-. The assessee also argued before Id CIT(A) that A.O. has not found any incriminating material which can prove that the assessee was having any other separate source of income from which advances would have been made and also not found any other incriminating material which can prove that the source which has already been offered to tax by the assessee i.e. 2.55 crore has been invested by the assessee somewhere else. Therefore, Id CIT(A) find merit in the submission of assessee and stated that it is not deniable fact that there was a deficit of stock in 24 ct gold. There was a sale of bullion in cash for 8397.879 grams and which has generated cash source of income for Rs. 2.55 crore approx. The said income has been included in trading account and has duly been offered to tax while filing return of income. The A.O. has also found this

position to be correct. During the course of survey proceedings, documentary evidences of advances given for purchase of gold for Rs. 1,61,74,000/-, were impounded by the survey team. The assessee- firm has submitted that there was no separate source of income except cash sale of bullion from which such advances have been made. Therefore, Id CIT(A) held that it is settled position of law that when source of income itself has been offered to tax, addition for application of same income cannot be made, as offered income source itself explains the investment. In the assessee's case undoubtedly source of income for Rs.2.55 crore has been offered to tax, and therefore, separate addition for 1,61,74,000/- is not justifiable and hence Id CIT(A) therefore deleted the addition of Rs.1,61,74,000/-. We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the order passed by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

41. In the result, ground No.3 raised by the Revenue, is dismissed.

42. Ground No.4 raised by the Revenue is reproduced below for ready reference:

“4. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in accepting the retraction of the assessee of his disclosure of Rs.5,80,46,000/- made during the survey on the basis of unexplained investment, net profit on difference of value, unexplained purchase of bullion and further discrepancy.”

43. We have heard both the parties. The Id. CIT(A) has dealt with the issue on merit and we have confirmed the findings of Id CIT(A) ground-wise above. That is, the amount of Rs.5,80,46,000/- has been dealt with by us while adjudicating above grounds of Revenue and

assessee. Therefore adjudication of the above ground of revenue becomes academic, therefore it does not require adjudication, hence we dismiss ground No.4 raised by the Revenue.

44. In the result, ground No.4 raised by the Revenue is dismissed.

45. In combined results, appeal filed by Revenue (in ITA No. 440/SRT/2018) is dismissed, whereas the appeal filed by the Assessee (in ITA No.443/SRT/2018) is partly allowed in above terms.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 19/09/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 19/09/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat