

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 339/Ind/2017, 439/Ind/2018 & 440/Ind/2018
A.Y.s: 2012-13, 2013-14 & 2014-15

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|------------------------------------|----------------------------|---|
| DCIT/JCIT(OSD) 2(1), Indore. | <u>बनाम/</u> Vs. | Shri Omprakash Dhanwani, 2, Chhota Sarafa, Indore |
| (Revenue / Appellant) | | (Assessee / Respondent) |
| PAN: AEZPD9192B | | |
| Assessee by | Shri S.S.Deshpande, CA | |
| Revenue by | Shri P.K.Mishra, CIT DR | |
| Date of Hearing | 10.08.2023 | |
| Date of Pronouncement | 06.11.2023 | |

आदेश / O R D E R

Per Bench:

Feeling aggrieved by appeal-orders dated 15.02.2017 / 16.02.2018 passed by learned CIT(A)-III Indore / CIT(A)-1 Indore ["CIT(A)"], which in turn arise out of respective assessment-orders dated 30.03.2015, 21.03.2016 and 22.12.2016 passed by respective Assessing Officers ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Years ["AY"] 2012-13, 2013-14 and 2014-15, the revenue has filed these three (3) appeals on following grounds:

I.T.A. No. 339/Ind/2017 - A.Y.2012-13:

1. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by directing to accept the book results and deleting the addition made by AO on account of estimation of gross profit on sale of*

gold and silver bullions to the tune of Rs. 51,20,79,310/- and Rs. 2,96,44,454/- respectively.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by deleting the addition made on account of estimate of gross profit on sale of gold and silver bars due to rejection of books of accounts, without giving any contrary finding against those of AO.
3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by deleting the addition made on account of estimate of gross profit on sale of gold and silver bars due to rejection of books of accounts, by ignoring the findings of AO in the assessment order of assessment year 2011-12, which formed the basis of rejection of books of account."

I.T.A. No. 439/Ind/2018 – A.Y. 2013-14:

1. That on the facts and circumstances of the case, the order of the Ld. CIT(A) is bad and erroneous in law as well on facts.
2. Whether in the facts and circumstances of the case, the Ld. CIT(A) was justified in admitting the appeal which was filed well beyond prescribed time limits without any verifiable sufficient cause for such substantial delay.
3. Whether in the facts and circumstances of the case, the Ld. CIT(A) was justified in not upholding the rejection of books of accounts of the assessee.
4. Whether in the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition to the tune of Rs. 60,82,26,205/- on account of Gold Bullion and addition to the tune of Rs. 1,56,33,208/- on account of Silver Bullion relying on the decision of Hon'ble ITAT Indore in earlier years in the case of the assessee.
5. That the decision of the Hon'ble ITAT in earlier years on the basis of which Ld. CIT(A) has delivered his decision has not been accepted and appeal before the Hon'ble High Court of M.P. has been preferred by the department.

I.T.A. No. 440/Ind/2018 – A.Y.2014-15:

1. That in the facts and circumstances of the case, the order of the Ld. CIT(A) is bad and erroneous in law as well on facts.
2. Whether in the facts and circumstances of the case, the Ld. CIT(A) was justified in not upholding the rejection of books of accounts of the assessee.
3. Whether in the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition to the tune of Rs. 34,40,34,340/- on

account of Gold Bullion and addition to the tune of Rs. 7,29,53,869/- on account of Silver Bullion by following the decision of Hon'ble ITAT Indore in earlier years in the case of the assessee.

4. *That the decisions of the Hon'ble ITAT in earlier years on the basis of which Ld. CIT(A) has delivered his decision has not been accepted and appeal before the Hon'ble High Court of Madhya Pradesh has been preferred by the Department."*

History of case – AY 2009-10 to 2011-12:

2. Before proceeding further, it would be relevant to take note of assessee's history of earlier AY 2009-10 to 2011-12. The assessee was engaged in the business of trading of gold and silver bullion. A search u/s 132 was conducted by revenue authorities on 25.11.2010 on assessee and one M/s MCS Trading Co. Pvt. Ltd., both engaged in identical line of business. Pursuant to such search, the assessments of AY 2009-10 to 2011-12 were framed u/s 153A/143(3). While framing assessments, the AO rejected books of account on the basis of incriminating material found during search suggesting the *modus operandi* of business that the gold or silver was being delivered at various centres at the request of customers but sale-consideration was shown as collected in cash primarily at Indore and the assessee was not maintaining proper sales-bills, customer-details and quantity-details. Having rejected books, the AO estimated gross-profit of assessee on 1 kg. of gold in the range of Rs. 4,000/- to Rs. 6,000/- per 100 grams and on sale of silver in the range of Rs. 1,200/- to Rs. 2,500/- per kg. Accordingly, the AO made additions on account of estimated gross-profit in AY 2009-10 to 2011-12.

3. Against order of AO, the assessee went in first-appeal. The CIT(A), though upheld the rejection of books, but found the AO's method of estimation of gross-profit as faulty. He made some modification, namely he grouped together the gold and silver segments and computed aggregate-turnover; then enhanced aggregate-turnover by 17.5% and then applied G.P.

Rate of 1.25% for all years. By such modification, the CIT(A) granted part-relief to assessee and at the same upheld part-addition too.

4. Against order of CIT(A), the assessee as well as revenue, both sides, went in second appeal before ITAT in **IT(SS)A Nos. 241 to 243/Ind/2015 and IT(SS)A Nos.254 to 256/Ind/2015**. The ITAT decided those appeals vide order dated 17.05.2016 holding thus:

"11. We have heard both the sides. We have also gone through various loose papers found and seized during search operation. For all these three assessment years, the assessments were abated. From various loose papers seized during search operation relevant to assessment year 2011-12, we find that certain entries are not tallying with the regular books of accounts. Further certain entries in the seized documents showing trial balance are also not reflected in the regular books of accounts. The assessee admittedly accepted the fact that for the assessment year 2011-12 there were incriminating documents which were not recorded in the books of accounts. All these facts suggest that the books of accounts maintained by the assessee for the assessment year 2011-12 were not reflecting true affairs and were liable to be rejected for working out the taxable profit. Therefore, we sustain the rejection of books of accounts by invoking the provisions of section 145(3) of the Act for the assessment year 2011-12 as held by the lower authorities. For the assessment year 2010-11 there is sharp decline in GP rate. The assessment was abated. The GP rate for assessment year 2009-10 was 0.53% which declined to 0.13% in the assessment year 2010-11. Therefore, we sustain the rejection of books of accounts for the assessment year 2010-11 also.

12. As regards application of gross profit rate and enhancement in the turnover, we have gone through the various documents placed before us as also the record of the case. We find that the assessee has disclosed GP rate of 0.53% in the assessment year 2009-10, 0.13% in assessment year 2010-11 and 0.10% in the assessment year 2011-12 on the sales recorded in the books of accounts. The turnover as per books of the assessee for the assessment year 2009-10 was Rs.190.26 crores. The turnover of gold bullion for the assessment year 2010-11 increased to Rs. 585.95 crores and for the assessment year 2011-12 it increased to Rs.1035.53 crores. One of the major reasons claimed for the fall in GP rate was the manifold increase in the turnover. The Assessing Officer estimated the profit on 1 kg. of gold in the range of Rs. 4000/- to Rs. 6000/- per 100 gm and GP on sales of silver was in the range of Rs.1200/- to Rs. 2500/- on 1 kg. The CIT(A) estimated the GP at 1.25% and also enhanced the total turnover by 17.5% for these years and made the addition.

13. We further find that the CIT(Appeals) vide para-14 of the order concluded that method of estimation of profit adopted by AO was defective and faulty hence such estimation of income was rejected for all the years in relation to gross profit on sales of gold bullion. Similar defects were also there

in estimation of profit by AO on sale of silver bars hence that estimation was also rejected. However, the learned CIT(A) grouped the sales of gold bullion and silver bullion together at Rs. 10,35,53,58,633/- (i.e. gold bullion Rs.1030,03,690/- and silver bullion Rs. 5,50,01,943/-) for A.Y. 2011-12. Similarly, the learned CIT(A) grouped the sales of gold bullion and silver bullion together at Rs. 585,95,67,563/- (i.e. gold bullion Rs.584,67,73,769/- and silver bullion Rs.1,27,93,794/-) for A.Y. 2010-11 and by making enhancement of 17.5% on aggregate sales, the learned CIT(A) applied gross profit rate of 1.25%.

14. *We further find that the additions in silver bullion account were made by the Assessing Officer at Rs.9,65,123/- and Rs.40,69,563/- in A.Y. 2010-11 & 2011-12 by estimating gross profit on sale of silver bullion. It was also contended by the learned counsel for the assessee before us that no incriminating documents regarding purchase/sale of silver bullion were found. Gross profit on sales of silver bullion was disclosed @ 0.63% in A.Y. 2010-11 and @ 1.06% in A.Y. 2011-12. Quantitative records have been maintained and books of accounts are audited. Sale of silver bars during and in A.Y. 2010-11 was Rs.1,27,93,794/- (522.946 kg) whereas sale in A.Y. 2011-12 was Rs. 5,50,01,943/- (1861.524 kg.). The Assessing Officer did not apply gross profit rate but he conducted market enquiry of silver bullion trade business. The Assessing Officer on the basis of market enquiry found that profit on one kg silver bar was in the range of Rs.1200/- to Rs.2500/- per kg. He, therefore, estimated the gross profit @ Rs.2,000/- per kg. in A.Y. 2010-11 and @ Rs.2,500/- per kg. on sales of 522.946 kg in A.Y. 2010-11 & on 1861.524 kg in A.Y. 2011-12 on sales of silver bar.*

15. *We also find that the assessee is dealing in precious metal like gold and silver and the rates are verifiable and available in open to every customer from MCX gold reports or Sarafa Publications. Thus, the customers who purchase goods from the assessee were well aware about the prevailing market price of these metals at the relevant time. Most of the purchases are from reputed dealers. Very few documents pertaining to the assessment year 2011-12 were seized which suggest that the assessee indulged in trading which was not recorded in the books of accounts. For recorded purchases, the assessee was maintaining day to day stock register with quantities and purchase vouchers. The payments were also made through banking channels. Therefore, the learned CIT(A)'s action in enhancing the turnover by 17.5% for all the years is unjustified. There was seizure of documents which suggest unaccounted sales for the assessment year 2011-12 and with a view to plug the loopholes, we are of the view that the enhancement in turnover by 5% on the sales recorded in the books of accounts shall be reasonable for the assessment year 2011-12. We accordingly direct the Assessing Officer to enhance the turnover by 5%. Further, on account of sharp fall in GP rate as disclosed by the assessee as compared to assessment year 2009-10, we also find it appropriate to enhance the turnover by 5% for the assessment year 2010-11. We direct accordingly. Since we are accepting the GP rate declared for the assessment year 2009-10 in the absence of any incriminating documents for the relevant period and better book results in comparison to succeeding years and no defect in books of accounts was found by the*

authorities below for assessment year 2009-10, therefore, we direct to accept the book results for the assessment year 2009-10. The gold prices were also increased during the relevant period. The average gold price for the period relevant to the assessment year 2007-08 was Rs.8.36 lacs per kg. which increased to Rs. 16.32 lacs per kg for the period relevant to the assessment year 2010-11 and Rs. 20,72,000/- for the period relevant to assessment year 2011-12. We also observe that whenever there is tremendous increase in the price of gold, the margin of profit shrinks. Gold market is well informed marked and guided by international price. There was VAT of 1% on the recorded trading of gold. Thus, the gross profit estimated on unrecorded sales cannot be applied to the recorded sales as the margin of tax also remains with the seller of unaccounted sales while in the recorded sales the prices are increased by VAT which reduces the margin of profit by the similar amount. The cumulative effect of increase in turnover and increase in gold price must have reduced the gross profit for the assessment years 2010-11 and 2011-12. We also find that the Additional Commissioner of the same Range in the case of Shri Nitesh Kumar Doshi for the A.Y. 2010-11 has accepted the G.P. rate at 0.14% on the recorded sales and Shri Doshi was also engaged in similar business. In the case of Baldev Krishna the GP was estimated at Rs. 400/- per 120 gms which comes to around 0.2% of the sales recorded. Similarly in the case of Vonamala Jagdishwaraiah; (2015) 44 CCH 005 GP at 0.1% has been accepted by Hyderabad Bench of ITAT and in the case of Mahendra Kumar Agrawal (2015) Tax Publication (DT) 2124 the Jaipur Bench of the Tribunal accepted the GP of 0.1%. Further, we are of the view that on unrecorded sales estimated, the profit has to be worked out at the rate of 1.25%. Considering all these aspects we sustain the gross profit rate of 1.25% on the enhanced turnover of gold bullion for the assessment years 2010-11 and 2011-12 and on the recorded turnover disclosed in the books of accounts, we direct to apply gross profit rate of 0.25%.

16. We also hold that the CIT(A) was not justified in considering the combined sales of gold and silver bullion because there was not a single incriminating document or any evidence found on the basis of which the Assessing Officer could reject the book results of purchase/sale of silver bullion. No addition can be made on estimations and on hypothetical grounds with regard to sale of silver bullion. We are also of the view that not only the enhancement made by the CIT(A) in silver bullion account by 17.5% but the application of GP rate of 1.25% applied by the learned CIT(A) is not justified. We, therefore, delete the additions made in silver bullion account for the assessment years 2010-11 and 2011-12."

[Emphasis supplied]

5. Thereafter, the revenue challenged ITAT's order before Hon'ble High Court of Madhya Pradesh in **ITA No. 140 to 142/Ind/2016**. Although Ld. DR for Revenue is not aware of status of those appeals, Ld. AR for assessee submitted that those appeals have already been decided by Hon'ble High Court vide judgement dated 14.09.2018 reported as **PCIT Vs. Shri Om**

Prakash Dhanwani (2018) 33 ITJ 854 (MP), copy of order is placed before us. Referring to Para No. 6 and 7 of order, Ld. AR submitted that the Hon'ble High Court has approved the order of ITAT. These paras are re-produced below for an immediate reference:

"6. The addition on account of estimation of gross profit of Gold and Silver Bar, the Commissioner of Income-tax (Appeal) has confirmed addition and the assessee was ultimately granted a relief of Rs. 4,98,05,923/-. The Commissioner of Income-tax (Appeal) has partly affirmed the order passed by the Assessing Officer. Against the order passed by Commissioner of Income-tax (Appeal), the assessee as well as the Income-tax Department preferred appeals before the Income-tax Appellate Tribunal (ITAT) and the ITAT has allowed the appeal of the assessee.

7. The present appeal has been filed under section 260A of the Income-tax Act, 1961 and the Income-tax Department has raised certain substantial questions of law. This Court has carefully gone through the order passed by the ITAT and the ITAT has given detailed fact finding in favour the assessee after scrutinizing the facts, the matter has been decided by the ITAT judiciously and the judgement has been delivered purely on the basis of facts on record. Relevant paragraphs of the order passed by the ITAT, while reducing the demand, reads as under:

XXXX (Para 12 to 16 of the order of ITAT – Already re-produced by us in foregoing paragraph No. 4, hence they are not being re-produced to avoid repetition).

Present appeals for subsequent AY 2012-13 to 2014-15:

6. With this historical background, we proceed to decide the captioned appeals before us for succeeding three years, AY 2012-13 to 2014-15. At the start of hearing, learned Representatives of both sides agree that the facts and issues of all three appeals are same, therefore these appeals can be heard together and be decided on the basis of facts of first-appeal in sequence, namely ITA No. 339/Ind/2017 of AY 2012-13, and the same decision shall apply *mutatis mutandis* to all three years. Accordingly, in the subsequent discussions, we would broadly refer the facts of AY 2012-13 (unless a separate/specific mention of other years becomes necessary) and adjudication made by us for AY 2012-13 shall hold good for all years.

7. The AY 2012-13 to 2014-15 involved in these appeals are not a part of search action. The assessee, however, continued to remain engaged in the business of trading of gold and silver bullion as in earlier years. Therefore, while finalizing scrutiny-assessments u/s 143(3), the AO, on the basis of *modus operandi* of assessee's business noted by his predecessor in earlier years, namely gold or silver being delivered at various centres at the request of customers but sale-consideration being collected in cash primarily at Indore and the assessee not maintaining proper sales-bills, customer-details and quantity-details, the AO show-caused assessee. In reply, the assessee produced books of accounts in the shape of Cash-Book, Sales-Book, Stock-Register, Purchase-Book, Bank-statements alongwith supporting documents (Para 4.2 of assessment-order) which the AO verified. The assessee also submitted that he has maintained proper books of accounts to show financial results and the same must be accepted. However, ultimately on Page No. 11 of assessment-order, the AO concluded thus:

AY 2012-13:

"Therefore, the modus operandi of assessee and issues like gold or silver bullion getting delivered at various centres in different states on request of customers but sales consideration is collected in cash only at primarily in Indore or few other places and no records of customers of cash sales, as discussed above are as similar to findings in Assessment-Order of AY 2011-12, on the basis of which books are rejected then, hence in view of above discussion and specific discrepancies the books of accounts of assessee for reference assessment year are rejected and the gross profit is determined as under:

"4.4 Gold Bullion :

During A.Y. 2011-12, in the assessment order passed u/s 153A rws 143(3), was determined as 6000 rupees on sale of per 100 gram kg. gold bar. Assessee had submitted that he has filed appeal before CIT(A) on this issue. In order to maintain the consistency with earlier, I also take the rate at Rs. 6000 on per 100 gram kg. gold bar, as assessee's modus operandi remain the same as in A.Y. 2011-12. During the year the assessee has shown purchases of Gold bar weighing 89,00,746.455 gms. for Rs. 2336,67,53,505/-. The sale of Gold bar weighing 89,00,746.455 gms. has been shown at Rs. 2338,95,97,376/-. The assessee has shown gross profit of Rs. 2,19,59,682/-. Thus, Gross profit comes out as Rs. 246.72 on sale of per 100 gms. kg. Gold

bar during the year, as shown by the assessee, the gross profit with the rate Rs. 6000 on sale of per 100 gram kg. bar comes as 53,40,38,992/-.

In view of above discussion the gross profit earned on sale of per 100 gram Gold bar is determined at Rs. 6000/- is Rs. 53,40,38,992/-. The addition on gross profit comes to Rs. 51,20,79,310/-. I am satisfied that the assessee had furnished inaccurate particulars and concealed its income, therefore penalty proceedings u/s 271(1)(c) initiated separately.

Addition : Rs. 51,20,79,310/-

4.5 Silver Bullion:

During A.Y. 2011-12, in the assessment order passed u/s 153A rws 143(3), rate of per kilogram silver bar was determined as Rs. 2500. Assessee had submitted that he has filed appeal before CIT(A) on this issue. In order to maintain the consistency with earlier year, I also take the rate of Rs. 2500 on per kilogram silver bar, as assessee's modus operandi remain the same as in A.Y. 2011-12. During the year the assessee has shown purchases of Silver bar weighing 12,155.354 kg. for Rs. 64,25,77,629/-. The sale of Silver bar weighing 12,155.354 gms. has been shown at Rs. 64,18,33,698/-. Thus, the assessee has shown gross loss of Rs. (-)7,43,931/-. The gross profit with the rate 2500 rupees on sale of per kilogram silver bar comes as Rs. 3,03,88,385/-. Thus, the addition to gross profit comes to Rs. 2,96,44,454/-. I am satisfied that the assessee had furnished inaccurate particulars and concealed its income therefore penalty proceedings u/s 271(1)(c) initiated separately.

Addition : Rs. 2,96,44,454/-."

Thus, for the AY 2012-13, the AO made addition of Rs. 51,20,79,310/- in gold business and Rs. 2,96,44,454/- in silver business. With identical observations, the AO also made additions of varying amounts in AY 2013-14 and 2014-15. In short, the AO followed the tune of his predecessor of AY 2011-12 for making additions in these three years, AY 2012-13 to 2014-15, involved in present appeals.

8. During first-appeal, the CIT(A), however, deleted additions fully by observing and holding thus:

"4.1 Search and seizure action u/s 132 was conducted at the business premises of the appellant on 25.11.2010. The appellant surrendered Rs. 10 crores for assessment years 2010-11 and 2011-12 on the basis of incriminating documents and cash seized during the search. The AO rejected the books of accounts for assessment years 2009-10, 2010-11 and 2011-12 and made addition on account of G.P.

4.2 The appellant has placed reliance on the **orders of the Hon'ble ITAT Indore in the appellant's own case for assessment years 2009-10 to 2011-12 and M/s. MCS Trading Co. P. Ltd. for assessment years 2010-11 and 2011-12.**

4.3 Hon'ble ITAT, Indore, in its order in **IT(SS)A Nos. 241 to 243/Ind/2015 and IT(SS)A Nos.254 to 256/Ind/2015 dt. 17.5.2016 in the appellant's case has held in paragraph 15 as under:-**

"15. We also find that the assessee is dealing in precious metal like gold and silver and the rates are verifiable and available in open to every customer from MCX gold reports or Sarafa Publications. Thus, the customers who purchase goods from the assessee were well aware about the prevailing market price of these metals at the relevant time. Most of the purchases are from reputed dealers. Very few documents pertaining to the assessment year 2011-12 were seized which suggest that the assessee indulged in trading which was not recorded in the books of accounts. For recorded purchases, the assessee was maintaining day to day stock register with quantities and purchase vouchers. The payments were also made through banking channels. Therefore, the learned CIT(A)'s action in enhancing the turnover by 17.5% for all the years is unjustified. There was seizure of documents which suggest unaccounted sales for the assessment year 2011-12 and with a view to plug the loopholes, we are of the view that the enhancement in turnover by 5% on the sales recorded in the books of accounts shall be reasonable for the assessment year 2011-12. We accordingly direct the Assessing Officer to enhance the turnover by 5%. Further, on account of sharp fall in GP rate as disclosed by the assessee as compared to assessment year 2009-10, we also find it appropriate to enhance the turnover by 5% for the assessment year 2010-11. We direct accordingly. Since we are accepting the GP rate declared for the assessment year 2009-10 in the absence of any incriminating documents for the relevant period and better book results in comparison to succeeding years and no defect in books of accounts was found by the authorities below for assessment year 2009-10, therefore, we direct to accept the book results for the assessment year 2009-10. The gold prices were also increased during the relevant period. The average gold price for the period relevant to the assessment year 2007-08 was Rs. 8.36 lacs per kg. which increased to Rs. 16.32 lacs per kg for the period relevant to the assessment year 2010-11 and Rs. 20,72,000/- for the period relevant to assessment year 2011-12. We also observe that whenever there is tremendous increase in the price of gold, the margin of profit shrinks. Gold market is well informed market and guided by international price. There was VAT of 1% on the recorded trading of gold. Thus, the gross profit estimated on unrecorded sales cannot be applied to the recorded sales as the margin of tax also remains with the seller of unaccounted sales while in the recorded sales the prices are increased by VAT which reduces the margin of profit by the similar amount. The cumulative effect of increase in turnover and increase in gold price must have reduced the gross profit for the assessment years 2010-11 and 2011-12. We also find that the

Additional Commissioner of the same Range in the case of Shri Nitesh Kumar Doshi for the A.Y. 2010-11 has accepted the G.P. rate at 0.14% on the recorded sales and Shri Doshi was also engaged in similar business. In the case of Baldev Krishna the GP was estimated at Rs. 400/- per 120 gms which comes to around 0.2% of the sales recorded. Similarly in the case of Vonamala Jagdishwaraiah: (2015) 44 CCH 005 GP at 0.1% has been accepted by Hyderabad Bench of ITAT and in the case of Mahendra Kumar Agrawal (2015) Tax Publication (DT) 2124 the Jaipur Bench of the Tribunal accepted the GP of 0.1%. Further, we are of the view that on unrecorded sales estimated, the profit has to be worked out at the rate of 1.25%. Considering all these aspects we sustain the gross profit rate of 1.25% on the enhanced turnover of gold bullion for the assessment years 2010-11 and 2011-12 and on the recorded turnover disclosed in the books of accounts, we direct to apply gross profit rate of 0.25%."

4.3.1 *The Hon'ble ITAT has accepted the gross profit rate declared for assessment year 2009-10 in the absence of any incriminating document for the relevant period, better book results in comparison to succeeding years and the fact that no defect in the books of accounts was found by the AO and CIT(A). The Hon'ble ITAT did not accept the book results for assessment year 2010-11 on account of sharp fall in G.P. rate as compared to assessment year 2009-10 and for assessment year 2011-12 due to incriminating documents seized during the search. The Hon'ble ITAT Indore found it appropriate to enhance the turnover by 5% for assessment years 2010-11 and 2011-12 and further sustained the addition of gross profit @ 0.25% on the recorded turnover and @ 1.25% on the enhanced turnover for assessment years 2010-11 and 2011-12.*

4.4 *The Hon'ble ITAT, Indore, in the case of **M/s. MCS Trading Limited in I.T.A. No. 257 and 258/Ind/2015** on similar facts has upheld the addition of gross profit @ 0.01% for assessment year 2011-12 where the book results have been rejected due to incriminating documents. The Hon'ble ITAT held that in absence of any incriminating documents there is no justification for making any estimation of gross profit in respect of assessment year 2010-11 for which the rejection of books of accounts has also not been upheld.*

4.4.1 *In the case of Ms. MCS Trading Co. P. Ltd., the CIT(A) had rejected the books of accounts for AY 2010-11 by invoking the provisions of section 145(3) by using his co-terminus powers. The AO had also rejected the books of accounts but not made any reference to section 145(3). The CIT(A) held that the cash sales are more than 90% of total sales and as the cash bills remain with the assessee, it gives lot of scope for manipulation of rates, quantity and amount of the bills. The Hon'ble ITAT held the view that during the course of the search proceedings, not a single incriminating document or loose paper was found from which the unaccounted trading of bullion by the assessee could get established. The Hon'ble ITAT also observed that the assessee had maintained stock register and such stock register was duly produced before the AO and the Revenue Authorities have not brought on record any single instance of any sales having been made at a rate lower than the then prevailing market rate. If the sale is not found to have been made at the rate*

below than the market rate, any allegation regarding manipulation in the cash memos without any basis has no legs to stand. The Hon'ble ITAT deleted the action of the CIT(A) in enhancing the sales on ad hoc basis by 20% of the sales shown in the audited accounts.

5. The comparison of the gross profit rate of the period under consideration is as under:

| Year | Turnover | Gross profit | G.P.% |
|---------|-------------|--------------|------------------------------------|
| 2009-10 | 5859567565 | 8108058 | 0.14 |
| 2010-11 | 10355358631 | 10599021 | 0.10 |
| 2011-12 | 24031431074 | 22099940 | 0.09 |
| | | | [CIT(A) has wrongly mentioned .90] |
| 2012-13 | 33030543784 | 35015986 | 0.11 |

5.1 It is seen that the turnover of the appellant is Rs. 3303,05,43,784/- for assessment year 2012-13 and Rs. 2403,14,31,074/- in A.Y. 2011-12 which is an increase of 37.4%. The G.P. has increased from 0.09% in A.Y. 2011-12 to 0.11% in A.Y. 2012-13.

5.2 The appellant had produced the stock register for verification during the assessment proceedings and the AO has not pointed out any instance of sales been made at a rate below the prevailing market rate. The Hon'ble ITAT has clearly held in the case of M/s. MCS Trading Co. P. Ltd. that if the sale is not found to have been made at the rate below than the market rate, any allegation regarding manipulation in the cash memos cannot be accepted. Further, the Hon'ble ITAT in the case of M/s. MCS Trading Co. P. Ltd. has deleted the estimation of gross profit for assessment year 2010-11 in the absence of any incriminating material. In the appellant's case the Hon'ble ITAT has upheld the addition on account of G.P. rate for A.Y. 2010-11 only due to the fact that there was sharp fall in the gross profit compared to the preceding year. In the period under consideration despite significant increase in turnover, the gross profit has increased compared to the preceding year.

5.3 In view of the above facts and circumstances of the case and respectfully following the decision of Hon'ble ITAT, Indore in appellant's own case and in the case of M/s. MCS Trading Co. P. Ltd., I hold that there is no justification for rejecting the books of accounts of the appellant for assessment year 2012-13 in the absence of any incriminating evidence and merely on the observation that huge number of cash sales are unverifiable. Ground No. 1 is, therefore, allowed.

5.4 As the rejection of books of accounts has not been upheld, the addition of Rs. 51,20,79,310/- made on account of estimation of gross profit on sale of gold bullion and Rs. 2,96,44,454/- on account of estimation of gross profit on sale of silver bullion is deleted. Ground no. 2 is allowed."

With similar observations, the CIT(A) also deleted additions for AY 2013-14 and 2014-15. We extract below the concluding paras of CIT(A)'s orders for an immediate reference:

AY 2013-14:

"4.2.7 The comparison of the G.P. Rate of the period under consideration is as under:-

| Year | Turnover | Gross profit | G.P.% |
|---------|-------------|--------------|------------------------------------|
| 2009-10 | 5859567565 | 8108058 | 0.14 |
| 2010-11 | 10355358631 | 10599021 | 0.10 |
| 2011-12 | 24031431074 | 22099940 | 0.09 |
| | | | [CIT(A) has wrongly mentioned .90] |
| 2012-13 | 33030543784 | 35015986 | 0.11 |
| 2013-14 | 32664254999 | 41529283 | 0.13 |

4.2.8 It is seen that the turnover of the appellant is Rs. 32,66,42,54,999/- for AY 2013-14, Rs. 33,03,05,43,784/- for AY 2012-13 and Rs. 24,03,14,31,074/- in AY 2011-12, which decrease in turnover. The G.P. has increased from 0.11% in AY 2012-13 to 0.13% in AY 2013-14.

4.2.9 The appellant had produced the stock register for verification during the assessment proceedings and the Assessing Officer has not pointed out any instance of sales been made at a rate below the prevailing market rate. The Hon'ble ITAT has clearly held in the case of M/s MCS Trading Co. (P) Ltd. that if the sales is not found to have been made at the rate below than the market rate, any allegation regarding manipulation in the cash memos cannot be accepted. Further, the Hon'ble ITAT in the case of M/s MCS Trading Co. P Ltd. has deleted the estimation of G.P. for AY 2010-11 in the absence of any incriminating material. In the appellant's case, the Hon'ble ITAT has upheld the addition on account of G.P. rate for AY 2010-11 only due to the fact that there was sharp fall in the G.P. compared to the preceding year. In the period under consideration despite decrease in turnover, the G.P. has increased compared to the preceding year.

4.2.10 In view of above facts and circumstances of the case and respectfully following the decision of Hon'ble ITAT, Indore in appellant's own case and in the case of M/s MCS Trading Co. P. Ltd. I hold that there is no justification for rejecting the books of accounts of the appellant for AY 2013-14, in the absence of any incriminating evidence and merely on the observation that huge amount of cash sales are unverifiable. Therefore, the appeal on ground no. 2 is therefore allowed."

AY 2014-15:

"4.2.7 The comparison of the G.P. Rate of the period under consideration is as under:-

| Year | Turnover | Gross profit | G.P.% |
|---------|-------------|--------------|-------|
| 2009-10 | 5859567565 | 8108058 | 0.14 |
| 2010-11 | 10355358631 | 10599021 | 0.10 |
| 2011-12 | 24031431074 | 22099940 | 0.09 |

| | | | [CIT(A) has wrongly mentioned .90] |
|---------|-------------|----------|------------------------------------|
| 2012-13 | 33030543784 | 35015986 | 0.11 |
| 2013-14 | 32664254999 | 41529283 | 0.13 |
| 2014-15 | 17542656728 | 45453242 | 0.26 |

4.2.8 It is seen that the turnover of the appellant is Rs. 17,54,26,56,728/- for AY 2014-15, Rs. 32,66,42,54,999/- for AY 2013-14, Rs. 33,03,05,43,784/- for AY 2012-13 and Rs. 24,03,14,31,074/- in AY 2011-12, which decrease in turnover. The G.P. has increased from 0.13% in AY 2013-14 to 0.26% in AY 2014-15.

4.2.9 and 4.2.10: XXX (identical to AY 2013-14 re-produced above)"

9. During hearing before us, Ld. DR for revenue strongly supported AO's order. He submitted that the CIT(A) has wrongly followed the orders of earlier year of ITAT in assessee's own case and in the case of M/s MCS Trading Co. Pvt. Ltd. for granting relief to assessee without taking care that in earlier years, there was a consideration of search u/s 132 conducted by department. He submitted that search-case has involvement of incriminating material found by authorities and therefore a different kind of reasoning. But present years under consideration are materially different since there is no involvement of any search. He emphasized revenue's grounds that the CIT(A) has not given any contrary finding against AO; the CIT(A) has deleted additions ignoring the findings made by AO for rejection of books; and that the CIT(A) has erred in giving decision on the basis of ITAT's order in earlier year although that order has not been accepted by department and the department filed next appeal to High Court.

10. Per contra, Ld. AR for assessee firstly carried us to entire assessment-order of AO where the AO has dealt this issue, namely para 4.1 to 4.5, and demonstrated that the AO has basically proceeded on the basis of past history of assessee of earlier years for which search was conducted and ultimately made the impugned additions in current year also just by following his predecessor's orders. Then, Ld. AR argued that the very contention raised by Ld. DR that in earlier years there was an involvement

of search and incriminating material having been founded by department, itself supports the assessee's very stand and not the revenue's case. He submitted that in the years under consideration, namely AY 2012-13 to 2014-15, there is no 'material' whatsoever available with the AO and the AO was simply hastened to apply his predecessor's order. He submitted that the principle of *re judicata* does not apply to income-tax proceedings and the authorities have to examine each year independently. He submitted that during assessment-proceeding when the AO show-caused assessee, the assessee produced books of account with supporting evidences and categorically submitted that he is regularly maintaining books of accounts of business; complete quantitative details of opening stock, purchase, sales and closing stock of each item are maintained; audit u/s 44AB of the Income Tax Act has been conducted and no fault has been reported by auditors. He submitted that the AO has also not found any serious defect or deficiency in books of account so maintained. He submitted that the AO has noted certain illustrations to tally 'day-end closing cash balance of assessee' by using his self-devised mathematical formulae of "Opening cash balance as per books (+) Purchases of day (-) Sale of day" and comparing the result arrived by him with "Closing cash balance as per books". But how can it tally when the purchase is made through bank and sales is made in cash. Ld. AR pointed out that it is clearly noted by AO himself in assessment-order itself that vide letter dated 25.03.2015, the assessee replied that this kind of tally, as per wish of AO, is impossible by any accounting in all over the world. Further, the assessee also submitted other important aspects like the banks do not accept cash after 5 PM but the sales of assessee continued even after 5 PM till mid-night. That means, entire sales of a day cannot be deposited in bank a/c on the very same day. Thus, the assessee made his best efforts to convince the AO about the anomaly in the formulae adopted by him but the AO went on concluding that the books of assessee were not correct rather than accepting anomaly in his own formulae. Before us, Ld. AR contended, very strongly and forcefully, that as per the knowledge and

understanding at his command being a senior Chartered Accountant, the tally required by AO is not possible at all by any accounting or mathematics in this world. Having said so, Ld. AR submitted that the AO has not raised any doubt about the correctness of the sales, purchases and day to day quantitative as well as valuation of opening and closing stock of assessee. Ld. AR contended that merely applying Gross Profit rates adopted by the predecessor while framing earlier year's assessment-orders of search cases, more particularly when there is no iota of evidence or material to make any adverse inference for current year, is most arbitrary and baseless.

11. Ld. AR then drew our attention to the orders of CIT(A) by which the impugned additions made by AO have been deleted. Ld. AR submitted that while the AO followed his predecessor's view in making additions, the CIT(A) adopted the observations, analysis and conclusions made in (i) the orders of ITAT in assessee's own case for those very years [the ITAT's order was also upheld by Hon'ble Jurisdictional High Court as discussed earlier under the heading "**History of case – AY 2009-10 to 2011-12**"]: and (ii) the order of ITAT in M/s MCS Trading Co. Private Ltd., another assessee in whose case a simultaneous search was conducted by department on the very same date and the underlying facts are identical. Ld. AR submitted that there can hardly be any objection by revenue against the order of CIT(A) which is based on the conclusions derived by higher forums. Therefore, the order passed by CIT(A) is a proper and valid order and must be upheld.

12. Having argued thus, Ld. AR went further to explain a later development which has also taken place after passing of impugned order by CIT(A) and which is a direct authority to support assessee's very stand that the rejection of books by AO for AY 2012-13 (or AY 2013-14 and 2014-15) and making addition in those years, is not justified. Ld. AR submitted that the case of **M/s MCS Trading Co. Private Ltd. for subsequent AY 2012-13 has already been decided by ITAT, Indore Bench in ITA No. 353/Ind/2017, order dated 09.04.2019**, wherein the ITAT has held, on

identical set of facts as of assessee, that the rejection of books and making additions in AY 2012-13 is not justified. Ld. AR pointed out that in the said decision, the ITAT has also referred, at multiple occasions, the ITAT's order of earlier years in present assessee's (Om Prakash Dhanwani's) case. The relevant paragraphs of the aforesaid order dated 09.04.2019, *while highlighting the reference of present assessee*, are re-produced below:

*"17. Brief facts relating to the Revenue's appeal for Assessment Year 2012-13 are that the assessee filed e-return of income filed on 21.09.2012 declaring income of Rs.1,20,80,430/-. Case selected for scrutiny through CASS followed by issuance of notice u/s 143(2) and 142(1) of the Act. Ld. A.O. examined the audited financial statements along with the Tax Audit Report. He further referring to the records pertaining to assessment completed u/s 153A r.w.s. 143(3) of the Act for the Assessment Year 2010-11 and 2011-12 on 28.3.2013, made an opinion that as for these two assessment years books of accounts were found defective and not reliable, same methodology should be adopted for Assessment Year 2012-13. Ld. A.O. accordingly rejected the book results and estimated the income by making additions for low gross profit on sale of gold bar and low gross profit on sale of silver and assessed the income at Rs.28,18,76,414/-. Aggrieved assessee preferred appeal before Ld. CIT(A) and succeeded on the grounds challenging the addition made by the Ld. A.O. by way of estimating the gross profit on sale of gold and silver bullion. Ld. CIT(A) followed the decision of the Co-ordinate Bench in the assessee's own case for Assessment Year 2010-11 and 2011-12 and also followed the decision of the Indore Tribunal in the case of **Omprakash Dhanwani IT(SS)A No. 256/Ind/2015 dated 17.05.2016** wherein similar facts were adjudicated and finding of Ld. A.O. rejecting the books of accounts and applying the provision of Section 145(3) of the Act was set aside.*

18. Ld. Departmental Representative vehemently argued supporting the orders of Ld. A.O. but could not controvert the fact that the case of the assessee is squarely covered by the decision of the Tribunal in assessee's own case for Assessment Year 2010-11 vide ITA No. 257 & 258/Ind/2015.

19. Per contra Ld. Counsel for the assessee relied on the decision of the Co-ordinate Bench in the case of assessee for Assessment Year 2010-11 and also on the detailed finding by Ld. CIT(A) and further submitted that the assessee is regularly maintaining the books of accounts in the ordinary course of business of bullion trading. Day to day stock entry in respect of each and every item of purchases as well as sales are maintained. Audit under the provisions of Companies Act 1956 u/s 44AB of the Income Tax Act have been conducted and no fault have been found by the Auditors in the maintenance of such books of accounts. Furthermore, the Ld. A.O. has also not found any significant defect or deficiency in such books of accounts and he has merely adopted the reasoning for Assessment Year 2009-10 and 2010-11 taken by his predecessor for finalizing the assessment, which is uncalled for. He also contended that the Ld. A.O has not raised any doubt about the correctness of

the sales, purchases and day to day quantitative as well as valuation of opening and closing stock. Merely applying Gross Profit rates adopted by the predecessor is most arbitrary and the finding of Ld. A.O is rightly rejected by Ld. CIT(A).

20. *We have heard rival contentions and perused the records placed before us. Revenue has challenged the finding of Ld. CIT(A) holding that the Ld. A.O. erred in rejecting the books of accounts of the assessee u/s 145(3) of the Act and has also challenged the finding of Ld. CIT(A) deleting the addition made by Ld. A.O on account of estimation of Gross Profit on sale of gold and silver bullion.*

21. *We observe that search in the case of the assessee was conducted u/s 132 of the Act on 25.11.10. Certain additions were made by the Ld. A.O for Assessment Year 2009-10, 2010-11 and 2011-12. The matters relating to Assessment Year 2010-11 and 2011-12 travelled up to the Tribunal. Incriminating material was found only for Assessment Year 2011-12. Assessee is in the same type of business of trading of gold and silver bullion and consistently maintaining the books of accounts and quantitative details. From perusal of the order of the Tribunal in assessee's own case for Assessment Year 2007-08, 2010-11 and 2011-12 dated 8.12.2014 (placed at paper book page 113 to 198), we find that for Assessment Year 2011-12 Tribunal upheld the rejection of books of accounts only for the reason that excess stock during the search was found and accordingly estimated the gross profit rate of the appellant. However, for Assessment Year 2010-11 as per the order of Tribunal vide IT(SS)A No. 257,258,568/Ind/2015 dated 08.02.2016, books of accounts were held not to be rejected and Tribunal also held that no estimation of Gross Profit can be made for the Assessment Year 2010-11 and books results should be accepted. Relevant extract from the aforesaid order (para 29) is being reproduced below:*

"We, respectfully, following the same, hold that in absence of any incriminating documents, there is absolutely no justification for making any estimation of g.p. in respect of assessment year 2010-11, for which, rejection of books of accounts has not been upheld by us. Accordingly, we hold that there was no justification in the Assessing Officer's action as well as in the learned CIT(A)'s action in estimating g.p. on sales for the assessment year 2010-11. However, for assessment year 2011-12, we have upheld the rejection of books of accounts and therefore, we hold that considering the facts and circumstances of the assessee's case, it would be just and fair to estimate g.p. on sale of gold bullion and silver bullion @ 0.30% as against 0.29% shown by the assessee in its books of accounts. Thus, the ground nos. 7(a) and 7(b) of the appeal of the assessee for assessment year 2010-11 are allowed and ground nos. 6(a) & 6(b) of the appeal of the assessee for the assessment year 2011-12 are partly allowed. Departmental grounds for both the years on this issue are dismissed".

22. *It is also pertinent to note that Ld. CIT(A) followed the decision of the Tribunal for Assessment Year 2010-11 and deleted the additions made by the*

Ld. A.O for the year under appeal and also held that the action of the Ld. A.O rejecting the books of accounts cannot be accepted observing as follows;

"5.1 Search and seizure action u/s 132 was conducted at the business premises of the appellant on 25.11.2010. In respect of A.Y. 2011-12 excess stock amounting to Rs. 1,73,81,169/- was found during the search and the appellant surrendered Rs. 5 Crores as additional income. The Assessing Officer rejected the books of accounts for A.Ys 2010-11 and 2011-12 and made addition on account of G.P.

*5.2 The appellant has placed reliance on the orders of the Hon'ble ITAT, Indore in the appellant's own case for A.Ys 2010-11 and 2011-12 and in the case of **Shri Omprakash Dhanwani for A.Ys 2009-10 to 2011-12.***

*5.3 Hon'ble ITAT, Indore in its order in IT(SS)A Nos 241 to 243/Ind/2015 and IT(SS)A Nos 254 to 256/Ind/2015 dated 17.05.2016 in the case of **Shri Omprakash Dhanwani** held in paragraph 15 as under:-*

"15. We also find that the assessee is dealing in precious metal like gold and silver and the rates are verifiable and available in open to every customer from MCX gold reports or Sarafa Publications. Thus, the customers who purchase goods from the assessee were well aware about the prevailing market price of these metals at the relevant time. Most of the purchases are from reputed dealers. Very few documents pertaining to the assessment year 2011-12 were seized which suggest that the assessee indulged in trading which was not recorded in the books of accounts. For recorded purchases, the assessee was maintaining day to day stock register with quantities and purchase vouchers. The payments were also made through banking channels. Therefore, the learned CIT(A)'s action in enhancing the turnover by 17.5% for all the years is unjustified. There was seizure of documents which suggest unaccounted sales for the assessment year 2011-12 and with a view to plug the loopholes, we are of the view that the enhancement in turnover by 5% on the sales recorded in the books of accounts shall be reasonable for the assessment year 2011-12. We accordingly direct the Assessing Officer to enhance the turnover by 5%. Further, on account of sharp fall in GP rate as disclosed by the assessee as compared to assessment year 2009-10, we also find it appropriate to enhance the turnover by 5% for the assessment year 2010-11. We direct accordingly. Since we are accepting the GP rate declared for the assessment year 2009-10 in the absence of any incriminating documents for the relevant period and better book results in comparison to succeeding years and no defect in books of accounts was found by the authorities below for assessment year 2009-10, therefore, we direct to accept the book results for the assessment year 2009-10. The gold prices were also increased during the relevant period. The

average gold price for the period relevant to the assessment year 2007-08 was Rs.8.36 lacs per kg which increased to Rs.16.32 lacs per kg for the period relevant to the assessment year 2010-11 and Rs.20,72,000/- for the period relevant to assessment year 2011-12. We also observe that whenever there is tremendous increase in the price of gold, the margin of profit shrinks. Gold market is well informed marked and guided by international price. There was VAT of 1% on the recorded trading of gold. Thus, the gross profit estimated on unrecorded sales cannot be applied to the recorded sales as the margin of tax also are increased by VAT which reduces the margin of profit by the similar amount. The cumulative effect of increase in turnover and increase in gold price must have reduced the gross profit for the assessment years 2010-11 and 2011-12. We also find that the Additional Commissioner of the same Range in the case of Shri Nitesh Kumar Doshi for the A.Y. 2010- 11 has accepted the G.P rate at 0.14% on the recorded sales and Shri Doshi was also engaged in similar business. In the case of Baldev Krishna the GP was estimated at Rs.400/- per 120 gms which comes to around 0.2% of the sales recorded. Similarly in the case of Vonamala Jagdishwaraiah; (2015) 44 CCH 005 GP at 0.1% has been accepted by Hyderabad Bench of ITAT and in the case of Mahandra Kumar Agrawal (2015) Tax Publication (DT) 2124 the Jaipur Bench of the Tribunal accepted the GP of 0.1%. Further, we are of the view that on unrecorded sales estimated, the profit has to be worked out at the rate of 1.25%. Considering all these aspects we sustain the gross profit rate of 1.25% on the enhanced turnover of gold bullion for the assessment years 2010-11 and 2011-12 and on the recorded turnover disclosed in the books of accounts, we direct to apply gross profit rate of 0.25%."

5.3.1 In the case of Shri **Omprakash Dhanvani** the Hon'ble ITAT has accepted the GP rate declared for AY. 2009-10 in the absence of any incriminating document for the relevant period, better book results in comparison to succeeding years and the fact that no defect in the books of accounts was found by the Assessing Officer and CIT(A). The Hon'ble ITAT did not accept the book results for A.Y. 2010-11 on account of sharp fall in G.P. rate as compared to A.Y. 2009-10 and for A.Y. 2011-12 due to incriminating documents seized during the search. The Hon'ble ITAT, Indore found it appropriate to enhance the turnover by 5% for AY s 2010-11 and 2011-12 and further sustained the addition of G.P @ 0.25% on the recorded turnover and @1.25% on the enhanced turnover for A.Ys 2010-11 and 2011-12.

5.4 The Hon'ble ITAT, Indore in the appellant's own case in ITA No.257 and 258/2015 after taking into consideration the order passed in the case of **Shri Omprakash Dhanwani** has upheld the addition of G.P @ 0.01% in A.Y. 2011-12 where the book results have been rejected due to incriminating documents. The Hon'ble ITAT held that in absence of any incriminating documents there is no justification for making any

estimation of G.P in respect of A.Y. 2010-11 for which the rejection of books of accounts has also not been upheld.

5.5 In appellant's case the CIT(A) had rejected the books of accounts of the assessee for A.Y. 2010-11 by invoking the provisions of section 145(3) by using his co-terminus powers. The AO had also rejected the books of accounts but not made any reference to section 145(3). The CIT(A) held that the cash sales are more than 90% of total sales and as the cash bills remain with the assessee, it gives lot of scope for manipulation of rates, quantity and amount of the bills. The Hon'ble ITAT held the view that during the course of the search proceedings, not a single incriminating document or loose paper was found from which the unaccounted trading of bullion by the assessee could get established. The Hon'ble ITAT also observed that the assessee had maintained stock register and such stock register was duly produced before the Assessing Officer and the Revenue Authorities have not brought on record any single instance of any sales having been made at a rate lower than the then prevailing market rate. If the sale is not found to have been made at the rate below than the market rate, any allegation regarding manipulation in the cash memos without any basis has no legs to stand. The Hon'ble ITAT deleted the action of the CIT(A) in enhancing the sales on ad hoc basis by 20% of the sales shown in the audited accounts for A.Y.s 2010-11 and 2011-12.

5.6 The Assessing Officer has primarily rejected the books of accounts holding that the huge cash sales made are unverifiable in the absence of completed address on the sale bills. The Hon'ble ITAT has clearly held in the appellant's case that if the sale is not found to have been made at the rate below than the market rate, any allegation regarding manipulation in the cash memos cannot be accepted. The Hon'ble ITAT has also not upheld the rejection of books of accounts for A.Y. 2010-11 in the absence of any incriminating material.

5.7 In view of the facts and circumstances of the case and respectfully following the decision of Hon'ble ITAT, Indore in appellant's own case it is held that the rejection of books of accounts cannot be accepted in the absence of any incriminating evidence and merely on the observation that huge number of cash sales are unverifiable, Ground No.2 is therefore allowed.

5.8 As the rejection of books of account has not been upheld the addition of Rs. 21,56,32,991/- made on account of estimation of gross profit on sale of gold bullion and Rs. 5,41,62,993/- on account of estimation of gross profit on sale of silver bullion is deleted. Ground Nos. 3(a) and 3(b) are allowed."

23. We therefore in the given facts and circumstances of the case and respectfully following the decision of the Co-ordinate Bench in assessee's own case for Assessment Year 2010-11 find that the facts of the case are similar. Books of accounts and stock records are consistently been maintained by the assessee in the similar fashion.

Audited reports by the Auditor under the Companies Acts and Income Tax Act are placed on records. No error is pointed out by the Auditors. Ld. A.O has made a general observation that the assessee is having huge amount of cash purchases and cash sales but has not placed or referred to any evidence on record to prove that the assessee is indulged into unaccounted sales and purchases. All the expense are vouched. Ld. A.O has merely followed the order of his predecessor of previous years for making the impugned addition. It is well settled principal that before rejecting the book results, discrepancies should be pointed out in the regular books of accounts by the Assessing Officer.

24. Therefore respectfully following the decision of the Co-ordinate Bench referred above and in the given facts and circumstances in the instant appeal, we are of the considered view that Ld. CIT(A) has correctly allowed the assessee's appeal by holding that the book results should be accepted and that the action of the Ld. A.O rejecting books of accounts and making the addition for low Gross Profit on sale of gold bar and sale of silver bar is devoid of any merit and uncalled for. We therefore find no inconsistency in the finding of Ld. CIT(A) and the same deserves to be confirmed. Accordingly, Grounds 1 & 2 of the revenue's appeal for Assessment Year 2012-13 stands dismissed."

[Emphasis supplied]

13. We have considered rival contentions of both sides and perused the material held on record including the orders of lower-authorities. On a careful consideration, we firstly find that the present appeals before us relate to AY 2012-13 to 2014-15 for which the assessee is regularly maintaining books of accounts of business which have been subjected to audit u/s 44AB of the Income Tax Act and no fault has been noted by auditors. Even the AO has not reported any defect or deficiency in books of account so maintained. Prima facie, there is also a merit in submission of assessee/Ld. AR that the 'mathematical formulae' adopted by AO to tally daily cash-balance, as discussed in foregoing paragraph of this order, is not a valid calculation. We find that the AO has rejected books of assessee and merely applied Gross Profit rates of Rs. 6,000/- per 100 grams kg. gold bar and Rs. 2,500/- per kg. silver bar, to maintain consistency with his predecessor view in earlier year's assessment-orders even when there is no adverse evidence or material *qua* current year to reject current year's books.

We find merit in Ld. AR's submission that *re judicata* does not apply to income-tax proceedings. Therefore, the AO's order merely following predecessor's order cannot be said to be a good order for current year. Going further, on perusal of CIT(A)'s order, we find that the CIT(A) has passed a reasoned order deleting the additions made by AO after due consideration of facts and figures giving weightage to the reasoning adopted by higher forums for earlier years, namely (i) ITAT order in assessee's own case, and (ii) ITAT's order in case of M/s MCS Trading Co. P Ltd. It is also demonstrated by Ld. AR for assessee that the said order of ITAT in assessee's own case for earlier years stand upheld by Hon'ble jurisdictional High Court. Ld. DR for revenue, though relied heavily upon the assessment-order passed by AO and the grounds raised by revenue, but could not show any infirmity, fallacy or perversity in the observations and conclusions made by CIT(A). That apart, the Co-ordinate Bench of ITAT, Indore has also decided later case of AY 2012-13 in M/s MCS Trading Co. P Ltd. whereby the AO's action of rejecting books and making addition on the basis of past history has not found any favour. Therefore, in such circumstances particularly applying the latest view taken by Hon'ble Co-ordinate Bench of ITAT, Indore in identical case of M/s MCS Trading Co. P Ltd. for the very same AY 2012-13, we are inclined to accept that the AO's order rejecting books of assessee and thereby making addition is not valid. Consequently, we approve the orders passed by CIT(A). The revenue fails in its appeals.

14. Before parting, we would also like to make a mention of Ground No. 2 of AY 2013-14 in which the revenue claims that the CIT(A) was not justified in admitting belated appeal filed before him without sufficient cause. During hearing, Ld. DR has not made any submission on this ground. Therefore, ideally this ground does not require any adjudication being non-pleaded/non-pressed. However, to impart justice, we have perused the Para

No. 4.1 of the order of first-appeal and on perusal, we find that the CIT(A) has consciously considered the delay issue and taking into account assessee's submissions supported by affidavit of assessee and his counsel's affidavit, has validly accepted the reasoning of delay; condoned same and decided appeal on merits. Therefore, there appears no infirmity in the action of CIT(A). Hence, this ground of revenue is dismissed.

15. Resultantly, these appeals of revenue are dismissed.

Order pronounced in the open court on 06.11.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 06.11.2023

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore