

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

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

**Ms. Astha Chandra, Judicial member**

**ITA No. 576/Del/2023 : Asstt. Year: 2018-19**

Chawla Jewellers, 2654, Bank Street, Karol Bagh, New Delhi-110005 (APPELLANT)	Vs	DCIT, Central Circle-19, New Delhi (RESPONDENT)
<b>PAN No. AA AFC4490J</b>		

**Assessee by : Sh. I. P. Bansal, Adv. &  
Sh. Vivek Bansal, Adv.**

**Revenue by : Sh. Vivek K. Upadhyay, Sr. DR**

**Date of Hearing: 29.08.2023**

**Date of Pronouncement: 08.11.2023**

**ORDER**

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

The present appeal has been filed by assessee against the order of Id. CIT(A)-27, New Delhi dated 12.01.2023.

2. Following grounds have been raised by the assessee:

*"1. That under the facts and circumstances of the case, Ld. CIT(A) has erred in law as much as in fact in upholding the following additions made by the AO.*

<i>Sr.No.</i>	<i>Particulars</i>	<i>Amount(INR)</i>
1.	<i>On account of alleged excess stock of 22Kr Gold and Polki Jewellery (113.5gms) u/s 69 of the Act, as per para 6.1 of the impugned order.</i>	<i>3,35,846/-</i>

2.	<i>On account of alleged excess stock of 18 carat gold jewellery (addition partly sustained) as per para 7.3 of the impugned order.</i>	12,41,652/-
3.	<i>On account of alleged excess stock of diamonds (723.37 carats) u/s 69 of the Act as per para 8.1 of the impugned order</i>	2,11,27,468/-

2. *That while upholding the aforementioned additions, Ld. CIT(A) has failed to appreciate that there is no enabling provision in the Act authorizing the authority conducting the survey u/s 133A of the Act to obtained valuation report and obtaining of valuation report is contrary to the provisions of section 133A read with section 142A of the Act. The valuation report can only obtained by making a reference for the purpose of assessment or reassessment, whereas u/s 133A of the Act, the income tax authorities are empowered to make an inventory of the stock checked or verified by him and there is no provision enabling the income tax authority conducting the survey to call for valuation. All the additions sustained by the Ld.CIT (A) are based on the value determined by the valuer. The valuation report as not being in accordance with law is liable to be ignored.*

3. *That under the facts and circumstances of the case, Ld. CIT (A) has erred in law as much as in fact in not holding that valuation report obtained by the AO during the course of survey was invalid on account of its being not in accordance with provision of the Act, therefore, relying upon the said valuation report, the above-mentioned additions made by the AO and upheld by him are not sustainable in the eyes of the law.*

4. *That under the facts and circumstances of the case, Ld. CIT (A) has erred in law as much as in fact that even the valuation report is made on the basis of estimates on which there could be more than one opinion, therefore, the contents of valuation report cannot be taken on their face value without proper consideration of the submissions made. Therefore, the above- mentioned additions upheld by Ld. CIT(A) are liable to be deleted.*

5. *That under the facts and circumstances of the case, Ld. CIT (A) has erred in law as much as in fact in not*

*appreciating the law that statements recorded during the survey action do not have evidentiary value and the material collected and statement obtained under section 133 A of the Act would not automatically be binding upon the assessee. Therefore, also the above-mentioned additions upheld by Id. CIT(A) are to be deleted.*

6. *That under the facts and circumstances of the case, Ld. CIT (A) has erred in law as much as in fact in not appreciating that the above mentioned additions which have been upheld by him are vitiated in law as the assessee was not granted with the opportunity to cross-examining the valuers whose valuations have been relied upon by the AO on the ground that such request is liable to be rejected on the ground that it was made at the fag end. The assessee has been denied of the principle of natural justice which has vitiated not only the assessment order but also the additions made and upheld.*

7. *That under the facts and circumstances of the case, Ld. CIT (A) has erred in law as much as in fact in upholding the addition of Rs. 3.35, 846/- despite the fact that Ld. AO has accepted that two broad items of jewelry namely 22 Kt. and 22 Kt. were not separately valued by the valuers and there was intermixing. Moreover, the difference of 113.50 gms being meager was liable to be ignored in view of large quantity of those these items which was of 34,943.26 gms. Thus, the addition of Rs.3,35,846/- is liable to be deleted.*

8. *That under the facts and circumstances of the case, Ld. CIT (A) has erred in law as much as in fact in upholding the addition of Rs. 12,41,652/- despite the fact that Ld. CIT(A) has accepted that overall difference of weight of 453.82 gms between two items of jewelry namely 14 Kt. and 18 Kt. which was difficult to be identified that whether the fact difference pertains either to 14 Kt. or 18 Kt. Ld. CIT(A) has also failed to appreciate that the difference of 453.82 gms being meager and come to 0.58% which was liable to be ignored in view of large quantity of those these items which was of 77962.74 gms. Thus, the addition of Rs. 12,41,652/- is liable to be deleted.*

9. *That under the facts and circumstances of the case, Ld. CIT (A) has erred in law as much as in fact in upholding the addition of Rs. 2,11,27,468/- without proper application of mind on the submissions made by the assessee by simply relying upon the findings of the AO. Ld. CIT(A) has failed to appreciate that the possibility of intermixing of 14kt and 19kt gold jewellery studded with*

*diamonds could not be ruled out and request of the assessee for seeking clarification from the valuers regarding the basis adopted for calculating the weight of the embedded diamonds was rejected on the ground of such request being belated request. The principles of natural justice were violated and addition has been upheld on the basis of wrong estimate adopted in the valuation report, for which the assessee was not given the opportunity of cross-examination and also on the ground that reference to the valuation officer during the course of survey being not sanctioned as per statutory provisions, the contents of valuation report could not be relied upon to uphold the additions.*

*10. That under the fact and circumstances of the case the Ld. CIT(A) has erred in law as much as in fact in upholding the applicability of section 115BBE of the Act on the ground that the additions sustained by him are liable to be added u/s 69 of the Act. The additions made by the AO and upheld by the CIT(A) are not liable for levy of special rate of tax described u/s 115BBE of the Act, on the ground that such additions could not have been made under section 69 of the Act."*

3. The assessee is a corporate entity engaged the business of gold and diamond jewellery. The return of income for AY 2018-19 was filed on 04.09.2018 at an income of Rs. 1,68,16,780/-. The assessee is carrying out the said business from two showrooms located at Karol Bagh and GK-1. A survey of the Act was carried out at business premises of the assessee on 03-01-2018 where stock taking was done. On the basis of stock taking on the date of survey and stock position as calculated by the registered valuers on the day of survey, which have been alleged by the AO in the assessment order, are found and above additions have been made.

4. The relevant facts pertaining to the assessed income of the assessee is as under:

<b>Particulars</b>	<b>INR</b>
Returned Income as per ITR	1,68,16,780/-
Addition: on account of alleged difference gms in the stock of 22kt gold jewellery and 22kt polki studded gold jewellery	3,35,846/-
Addition: on account of alleged difference of 453.82 gms in and 18kt gold jewellery	62,66,511/-
Addition: on account of alleged difference of 723.37 carats being excess diamonds found during survey	2,11,27,468/-
Addition: on account of alleged deficit stock found during the survey	1,47,26,510/-
<b>Total Income</b>	<b>5,92,73,115/-</b>

5. The assessee has contested all the above-mentioned four additions which are made on account of difference in the stock found during the survey vis-a-vis recorded in the books of accounts.

6. After considering the reconciliation submitted by the assessee during the course of assessment proceedings, the AO has prepared a chart which is at page 2 of the Assessment Order which is reproduced below:

S.No.	Particulars of Item	As Books	Per Valuation	As Per Valuation	Difference in Weights	Rate	Amount
1.	GOLD22(INGMS)	22242.380	14226.71		<b>-8015.670</b>	2959.00	<b>-2,37,18,368</b>
2.	POLKI22(INGMS)	12700.880	20830.050		<b>8129.170</b>	5286.00	<b>4,29,69,894</b>
3.	14KGOLD(INGMS)	70894.976	59875.590		<b>-11019.386</b>	2280.00	<b>-2,51,24,200</b>
4.	DIAIN14KT(INCIS)	14974.360	13408.830		<b>-1565.53</b>	23242.45	<b>-3,63,86,752</b>
5.	18KG0LDC1NGMS)	7067.757	18540.970		<b>11473.213</b>	2736.00	<b>3,13,90,711</b>
6.	DIAIN14KT(INCIS)	2112.180	4501.610		<b>238943</b>	29207.00	<b>6,97,88,082</b>

7. After accepting the reconciliation, the AO recorded in the notice dated 01.04.2021 that the assessee has submitted a reconciliation where gold and Polki 22kt, 14kt gold and 18kt gold and diamond and they are required to be clubbed together for the purpose of valuation as they have been considered as similar items.

8. The AO show caused the assessee to explain as to why excess stock as calculated above at Rs.14,41,49,586/- and less stock of Rs.8,52,29,321/- should not be added u/s 69A of the Act. In response to the show cause, the assessee submitted following two charts consisting of figures in respect of gold jewellery of 22kt including Polki studded 22kt gold jewellery of 14kt and 18kt and gold jewellery of 14kt and 18kt studded with diamonds. These charts are reproduced below:

S. No.	Particulars of item	As Per Books	As Per Valuation	Difference in Weights	Rate	Amount
1.	Gold22Kt	22,242.38	14226.71	(8,015.67)	2,959.00	(2,37,18,368)
2.	Polki22Kt	12,700.88	20,830.05	8,129.17	2,959.00	2,40,54,214
3.	14KGold	70,894.98	59375.59	(11019.39)	2280.30	(2,5134,200)
4.	18KGold	7,067.76	18,540.97	11,473.21	2,736.00	3,13,90,711
Total INGMS () denotes excess in books		112,905.99	1,13,473.32	567.33		66,02,357

*Weight in carats*

Sl. No.	Particulars of item	As Per Books	As Per Valuation	Difference In Weights	Rate	Amount
1.	Diamond in 14KT	15074.36	13408.83	(1665.53)	23,242	(3,87,10,998)
2.	Diamond in 18KT	2,112.18	4,501.61	2389.43	29207	637,88,082
Total in Carats () denotes excess in books		17,186.54	17,910.44	723.90		3,10,77,084

9. Based on the above charts, the assessee submitted that there is no difference in stock, as has been alleged being

positive and negative and the difference is on account of error committed while valuing the stock. The assessee is maintaining comprehensive stock record and alleged positive difference is merely on account of calculation error on the part of the valuers.

### **DIFFERENCE BETWEEN 22KT GOLD JEWELLERY & 20KT POLKI STUDDED GOLD JEWELLERY**

10. So far as, it relates to positive difference of 22kt studded gold jewellery and negative difference in 22kt gold jewellery which are 8129.1 and respectively, it was submitted that both these items have been inventoried and accounted for together in the account books of the assessee on the ground that the value of Polki is determined in accordance with prevailing gold rate, therefore, Polki studded jewellery is valued almost at par with 22kt gold jewellery. Even the valuation experts have treated Polki at par with 22kt gold and such there is no ground or justification for making inflated valuation of Polki studded 22kt gold jewellery. There being apparent congruity between these two items and on combine analysis, it can be seen that the net difference is only of 113.50 gms (8129.170 - 8015.67). Such difference in percentage being 0.08 percent of the entire stock, therefore being negligible is to be ignored and be taken as there is no difference and otherwise also such difference can be on account of various factors like humidity/moisture content, accuracy/precision/sensitivity of the measuring scale and even existence of wax used for pasting of Polki.

**DIFFERENCE BETWEEN 14KT & 18KT GOLD JEWELLERY**

11. So far as, it relates to difference in the quantity and jewellery wherein there is negative difference in 14kt gold jewellery of 11,019.38 gms and in 18kt gold jewellery there is a positive difference gms was explained that the said difference was due to inter-mixing at the time of valuation and as such there is no difference as has been alleged was submitted that it is almost impossible from physical appearance to differentiate between and 14kt gold jewellery and the same can only be identified from the tags attached to the jewellery.

12. The valuation of jewellery done during the course of survey was in a limited time frame and as such obvious calculation mistake was bound to creep in as a result of which the valuers have mixed up 14kt gold jewellery with 14kt gold jewellery.

13. The mixing of 18kt gold jewellery and 14kt gold jewellery by the valuer can even be visualized on comparison of aggregate weight of both these items as combined weight of both these jewellery items, as per books of accounts is 77,962.733 gms (70894.976 14kt + 7067.757 18kt) as against combined weight of these jewellery items as found during the survey is 78,416.560 gms (59875.590 gms 14kt + 18kt) and the remaining difference is only of 453.827 gms. The aggregate quantity of both these jewellery items as per books of accounts being in consonance of quantity of both these jewellery items found during the course of survey further strengthen the view point that the difference found at the time of survey was only due to inter-mixing of both these items. Thus, it was explained

that as such case of any shortfall or inflation of both these items.

14. So far as, it relates to remaining positive difference of 453.827 gms, it was submitted that in percentage this is only 0.58 percent of the entire stock and is attributable to error occurred at the time of the estimation and weighment which is very common in the business of jewellery. The difference can also be on account of humidity/moisture content and accuracy/precision/sensitivity of the measuring scale and as such the meager difference of 0.58% may kindly be ignored for the purpose valuation.

15. It was also submitted that there is a possibility of clerical mistake on the part of the data entry operator while punching jewellery details in the stock record which also cannot be ruled out and can result in such difference.

#### **DIFFERENCE BETWEEN 18KT AND 14KT DIAMOND STUDDED GOLD JEWELLERY**

16. Referring to chart above, it was pointed out that if both diamond studded gold jewellery of 14kt and 18kt are taken together than the difference in the stock would only be of 723.90kt as aggregated quantity of these items of the jewellery as per valuation report would be of 17910.44 gms and as per books it would be of 17186.54 gms and the difference would be of 723.90kt (17910,44 gms 17186.54 gms). The inter-difference is of negative stock of 1665.53 gms in gold jewellery and positive stock of 2389.43 gms of 18kt gold jewellery. The difference calculated between positive and

negative stock put together is 723.90 gms being less available stock as per books as compared to value of these items of gold jewellery by valuers during the course of survey.

17. It was explained that the alleged difference only on account of estimation error and correctness of weight of diamonds as mentioned in the valuation report is not free from doubt as it is case of counting and valuing diamonds embedded the jewellery and there is a considerable chance of miscalculating the number and weight of diamonds keeping in mind that valuation was carried out in a haste and in limited time frame. It was submitted that as per standard practice in jewellery business, approximately 4gms to 5gms of gold is required for embedding 1kt of diamond because diamond being a stone requires certain degree of strength the underling metal for sustenance of ornament and this fact further supported by the inconsistency in two valuation reports prepared by two different valuers on two showrooms of the assessee. Following chart was submitted to show such inconsistency in the ratio of 1kt diamond vis-a-vis gold in which such diamond is studded. Such ratio as per valuation done at Karol Bagh was 4.68gms & 4.13 gms of 14kt and 18kt gold jewellery respectively as against valuation done for Greater Kailash showroom which was 4.11 gms & 3.70 gms of 14kt and 18kt gold jewellery respectively. Such inconsistency was relied upon to say and contend that there was scope and possibility of calculation mistake, therefore, the alleged difference was to be ignored. The chart submitted is as under:

Particulars	Greater Kailash Showroom			Karol Bagh Showroom			Total		
	14 Carat	18 Carat	Total	14 Carat	18 Carat	Total	14 Carat	18 Carat	Total
Gross weight Of jewellery (ingms)	44,694	15,606	60,301	15,181	2,259	17,441	59,876	17,866	77,741
Net weight of metal (ingms.)	42,622	14,806	57,428	14,214	2,121	16,335	56,836	16,927	73,763
Diamond in carat	10,361	4,001	14,361	3,035	514	3,549	13,396	4,514	17,910
Per carat diamond contain	4.11	3.70	4.00	4.68	4.13	4.60	4.24	3.75	4.12

18. It was further submitted that elimination in the alleged difference the stock of 14kt and 18kt diamond studded gold jewellery would by itself is sufficient to eliminate the alleged difference of diamonds studded in and diamond jewellery as such jewellery is intricately linked with weight of gold jewellery and there could be no case of excess embedded diamonds without there being excess gold jewellery. Thus, it was pleaded that there is no difference between diamonds recorded in the books of accounts and found in the survey.

### **OBICTIONS WITH REGARD TO RATE APPLIED FOR 14KT, 18KT & 22KT GOLD JEWELLERY & RATE APPLIED FOR VALUING THE DIAMOND**

19. It was submitted that the valuer did not give any basis for adopting rates 18kt & 24kt gold jewellery and no justification has also been given for valuing diamonds. It was submitted that from the valuation reports itself it can be seen that these are full of subjectivity on the basis of which these valuation reports cannot be relied upon for the purpose of Income Tax Act, 1961. The valuation method adopted by the assessee for valuing its stock is cost or net realization value (NRV) whichever is lower

and as against that the method adopted the valuation report by the valuer not disclosed and is vulnerable to inflate the valuation of stock. Moreover, there is inconsistency in the rate adopted for valuing Polki as its value is substantially lower than fine cut/polished diamonds. Therefore, it was submitted that the element of subjectivity and arbitrariness in the valuation report for valuation of stock is established and is against the settled legal position, according to which the valuation of difference in stock should be on the basis of average purchase price in the hands of the assessee on the basis of well-recognized principle of valuing the stock at cost or market rate whichever is lower.

20. To support the above contentions, following evidences were submitted:

1. Polki stock ledger since FY 2010-11 to of both the showrooms showing that no fresh Polki jewellery purchase is entered as the same is clubbed with gold jewellery and actual sale of Polki jewellery out of old stock is excluded from the stock register. (Annexure-1)
2. Sale bills of Polki jewellery sold out of old stock (Annexure-2)
3. Specimen of purchase invoice showing Polki items included in gold jewellery no specific rate for Polki is charged (Annexure-3)
4. Sale bills of Polki items showing no separate rate charged for Polki and included in gold rates (Annexure-4)
5. Purchase bills of diamond jewellery from different suppliers clearly showing that 4 to 5 gms gold required to stud I carat of diamond (Annexure-5)

**REPLY DATED 15.06.2021**

21. In addition to reply dated 18.05.2021, the assessee submitted another reply on 15.06.2021 to place on record further evidences to say and contend that Polki studded gold jewellery and 22kt gold jewellery have been accounted for only under the head 22kt gold jewellery, the evidence submitted are as under:

- 1) Sales invoice of M/s Sharda K. Jewellers supply to containing details of Polki jewelers which has been valued at gold rate without specifying the value of Polki.
- 2) Sales invoice of M/s Shri Kami Indra Kripa Jewellers supply to A.P. Jewellers containing details of Polki Jewellery which has been valued at gold rate without specifying the value of Polki.
- 3) Sales invoice of M/s Shri Raj Leela Jewellers supply M/s R.K. Jewellers containing details of Polki jewelers which has been valued at gold rate without specifying the value of Polki.
- 4) Extract of advertisement made by the assessee on Instagram on dated October 20, 2020 clearly showing that Polki jewelers is available at gold rate.

**REPLY DATED 07.07.2021**

22. That in continuation of earlier responses it was submitted that alleged differences in various segments of jewellery as per the valuation reports are unrealistic and cannot be made basis

for drawing adverse inference against the assessee. Attention was invited to already highlighted key discrepancies and inconsistencies in the valuation reports which were reiterated again as under:

- 1) The fact of inter-mixing of 18 kt and 14 kt of jewellery resulting in huge differences in individual segments. No criteria have been given for correctly identifying the gold purity of each jewellery item.
- 2) Basis for measuring diamond weight in a studded jewellery item not given. It is not known as how the number of diamonds and their weight carats was ascertained.
- 3) Valuation of diamond is full of subjectivity and no objective criteria based on purchase value of diamond by assessee was adopted resulting in arbitrary high valuation.
- 4) Highly inconsistent approach in weighing and valuation jewellery by both the valuers.

23. It was further submitted that degree/level of estimation involve valuation also has a significant impact while making comparison with recorded stock. Thus, it was requested that in the interest of justice and fair assessment, to ascertain estimation involved, process of evaluation etc. may be made from independent sources such as internal, jewellery experts, third-party valuers or even the valuers from whom the reports in the present case are obtained so that the appropriate adjustments could be made to the figures appearing in the valuation reports.

## **ADDITION WISE CONCLUSION DRAWN BY THE AO AND THE CALCULATION OF ADDITIONS**

### 1<sup>st</sup> addition of 22 Kt jewellery and 22 Kt Polkit studded Gold jewellery

24. From the explanations and evidences submitted and also taking into consideration the fact that one of the valuers namely M/s Amit Jeweller, in its valuation had also valued Polki under the category of gold jewellery and no separate valuation was done. The AO has also observed that overall combined weight of both the jewellery found during survey almost matches with that recorded in the books of accounts. The AO has also taken into consideration the fact that no separate inventory vis-à-vis Polki jewellery is maintained by the assessee. In these circumstances, AO has accepted Polki jewellery as part and parcel of gold jewellery. However, AO did not accept the physical stock difference and by adopting rate of 2959 per gm an addition of Rs.3,35,846/- has been made.

### 2<sup>nd</sup> Addition of Difference between 14Kt Gold jewellery

25. The AO did not accept the contention of the assessee that there was inter-mixing of both the above-mentioned items of jewellery, therefore, he has rejected the contention that combined weight of both these items may be taken to compute difference. Relying upon survey report, the AO has observed that there is excess physical stock of 11473.21 gms in 18kt gold jewellery and deficit physical stock of 11019.39 gms of 14kt gold jewellery. He also rejected the contention of the assessee that absence of tags on the items of jewellery indicating quality

of gold earmarking specific kt gold involved in that item, it could only be determined by way of hall-mark identification in a case of inter-mixing of the same. The AO also rejected the request of the assessee for making further inquiry from the valuers on the ground that such request of the assessee cannot be entertained at the fag end of the proceedings particularly in the absence of such request having been made during the time of survey and also because the jewellery under question is stock trade and thus cannot be valued again at this stage.

26. The AO also observed that shortage and excess of over hundred kg jewellery in individual segment goes against human probabilities. However, the AO has accepted the possibility of inter-mixing of both these items in the presence of fact that figures of shortage and excess weight in both these items are complimenting each other. For this reason, the AO has observed that would be fair to tax net excess of gold jewellery as per valuation reports being a sum of (excess Rs.3,13,90,711/- (-) shortage Rs.2,51,24,200/-) by considering such amount Rs.62,66,511/- as investment of undisclosed income in the of such excess physical stock outside the regular books of accounts.

### 3<sup>rd</sup> Addition of Excess Diamonds found during survey

27. The AO has charted a table according to which there is a negative difference in the quantity of diamonds studded gold jewellery of 1665.53 kt and positive difference in 18kt gold jewellery of 2388,90 kt. The net difference by combining both items of 14kt gold jewellery and 18kt gold jewellery has been worked out for 723.37 kt.

28. The AO has considered the contention of the assessee for taking collective weight of these items and also the contention regarding incorrect Departmental valuation report on the issue of counting and measuring the weight of diamonds which according to assessee was done on estimate basis and also the contention that the quantity and weight of diamonds embedded in jewellery is fully corroborated from the inventory maintained according to which excess diamonds so calculated by valuers could not have been embedded in the available jewellery. The AO has also considered the request of the assessee for seeking clarification from the valuers regarding the basis adopted for calculating the weight of the embedded diamonds which according to AO could not be accepted on account of delay in making such request.

29. The AO has observed that the contentions of the assessee are not acceptable after consideration. The very purpose of survey action is to surprise check the physical stock with the stock recorded in the books for detection of unexplained income. In the present case huge difference of 723.37 kt of diamond was found per valuation report and the weight of diamonds are calculated on basis of descriptive tag attached with the ornaments. Therefore, the allegation of estimation has no legs to stand. The assessee did not furnish any reconciliation statement or any material to justify/ excess diamonds. As such the validity of valuation reports is not affected reasonable degree of estimation employed by the valuer is permissible and cannot be detrimental to the correctness of the report. Thus, the AO has treated net excess of diamonds 723.37 kt as stock purchased from unexplained sources u/s 69 of the AO valued

the rate of diamonds at Rs.29,207/- per kt being higher average value of diamonds taken in the valuation reports which were Rs.23,242/- for diamonds studded in 14kt gold jewellery and Rs.29,207/- for diamonds studded in gold jewellery and an addition of Rs.2,11,27,468/- has been worked out u/s 69 of the Act with application of tax rate as per section 115BBE of the Act.

#### 4<sup>th</sup> Addition of Deficit stock found during the survey

30. The AO has applied gross profit rate of 16.82% being average gross profit of last two years on the negative stock of following three items by treating the negative stock as sales made outside the books of accounts. Description of these three items is as under:

Sr. No.	Description of item	Value (INR)
1.	Unaccounted sale in respect of 22kt gold jewellery	2,37,18,368/-
2.	Unaccounted sales in respect of diamonds studded 14kt gold jewellery	3,87,10,998/-
3.	Amount of unaccounted sales in respect of 14kt gold jewellery	2,51,24,200/-
Total		8,75,53,556/-

31. Applying the gross profit rate of 16.82% an addition of 1.47,26,510/- (1682% of Rs.875,53,556/-) has been made.

32. It would be relevant to reproduce the observations of the AO in the assessment order while making this addition, which are as under:

*"During the course of survey proceedings, it has been found that there is negative difference of 8015.670 gm in respect of 22Kt gold*

*jewellery. The value of such negative stock 2959/- per gm comes to Rs 2,37,18,368/- Similarly, there is negative difference of 1,665.53 Ct in respect of Diamond studded in 14 kt gold jewellery ie the stock as per books of accounts is in excess to the physical stock found during survey. The value of such stock as per valuation report is 3,87,10,998/-, Further, there is negative difference of 11019.39 gm in respect of 14Kt gold jewellery valued at Rs. 2.51,24200/-in valuation report. These negative differences have arisen due to out of books unaccounted sales made by the assessee. As the assessee has failed to furnish any plausible explanation in respect of negative difference of 22 Kt gold jewellery, Diamond studded in 14 kt gold jewellery & 14kt gold jewellery found during survey. The same is hereby treated as unaccounted sales....."*

### **SUBMISSIONS TO ASSAIL THE ABOVE FOUR ADDITIONS**

33. The present case was taken up for scrutiny for the reason that a survey action u/s 18SA of the Act was carried out at the business premises of the assessee on 03-01-2016 leading to discovery of discrepancy in stock of jewellery in both the showrooms of the assessee. Perusal of the assessment order would reveal that the whole bass of the additions made are revolving around the discrepancy of stock in jewellery as computed on the basis of valuation reports prepared by two different valuers at each of the showroom. The valuation of stock found at GK showroom of the assessee has been rendered by Sh. Varun Jain government registered valuer and valuation of stock found at Karol Bagh showroom has been prepared by Sh. Amit Vats, both these valuations are signed by these valuers on 04-01-2018. The discrepancies pointed out and considered by the AO for making addition relate to 22kt gold jewellery and polki jewellery studded in 22kt gold; 14 kt gold jewellery

studded with diamonds and 18kt gold jewellery studded with diamonds. Cross weight of such jewellery as per valuation done by Sh. Vats of Karol Bagh showroom 68,691.12 gms and gross weight of such jewellery as per valuation done by Sh. Varun Jain at GK showroom is 1,47,781.12 gms. Thus, total gross weight the jewellery found at both the showrooms comes to 2,16,472.24 gms.

34. During the survey action, thorough verification and stock was carried out and during the course of assessment proceedings also complete verification was made regarding accounts as well as stock of the assessee which includes details of sales; purchases and expenses claimed. No defect or discrepancy has been found either in the maintenance in the books of accounts the method in which the accounts of the assessee are being maintained on consistent basis. The discrepancy in the stock has only been worked out on the basis of stock inventory as valued by the abovementioned both valuers and additions have been made only on those discrepancies. No defect has been found with regard to purchases and sales made by the assessee.

35. In this background, with regard to each of the addition for which the detailed discussion has been made in the earlier part of these submissions, it is the case of the assessee that in the facts and circumstances of the case, none of these additions are called for and all these are liable to be deleted.

**36.** The submissions of the assessee before the Id. CIT(A) on merits of the issue is as under:

*"37. That reference is made to the additions of Rs. 3,35,846/- and Rs, 39,89.430/-. Since both these additions have impact on each other, the common submissions are made. The facts have already been discussed in detail. It has been discussed that the assessee had been treating 22kt gold jewellery and 22kt polki gold jewellery both at par in its books of accounts. Thus, the stand of the assessee right from the beginning was that these two items of jewellery cannot differently and negative positive theory is not applicable to both these items. After considering these submissions of the assessee, the AO has observed that this contention of the assessee is plausible particularly in view of the fact that one of the valuer M/s Amit Jeweller has also valued polki under the category of 22kt gold jewellery and no separate valuation has been made for the same. The AO has further observed that over all combined weight of both the jewellery found during the survey almost matches with that recorded in the books. The AO further observed that from the sale bills also the assessee is adopting consistent method of valuing polki at applicable gold rates and as such there is no difference between the polki studded and plain 22kt. gold jewellery. It is also observed by the AO that even in the books of accounts the assessee did not maintain separate inventory vis-a-vis polki jewellery. In view of these findings recorded by the Id. AO, id.AO has arrived at a conclusion that total unaccounted stock in respect of 22kt. gold jewellery and 22kt polki studded jewellery is 113.50gms. For the sake of completeness these observations made in the assessment order are reproduced below:*

*"The assessee has explained that in its books of account no distinction is made between 22Kt Gold jewellery and 22Kt Polki studded jewellery both types of jewellery are valued and accounted for together. It was further submitted that Polki valued at par with gold and as such there is parity of valuation between the two types of jewellery. The submission of the assessee hinges on the fact that if both types of jewellery are weight and valued together, there will be no difference except for 113.50 gms.*

*On closer perusal of the survey report and submission of the assessee, it is found that the contention of the assessee appears to be plausible particularly when one of the valuer M/s. Amit Jewellers has also valued Polki under the category of 22 kt gold jewellery and no separate valuation has been done for the same. It is also seen that overall combined weight of both the jewellery found during survey almost matches with that recorded in the books. It is further noted from the sale bills that assessee is adopting consistent method of valuing polki at the applicable gold rate and as such there is no difference between the Polki studded and plain 22kt gold jewellery. Even in the books of account, no separate inventory is maintained vis-à-vis Polki jewellery. Thus, the total unaccounted stock in respect of 22 kt gold jewellery and 22 kt. Polki studded gold jewellery is computed at 113.50 gms. Which is valued at Rs. 3,35,846/- at the rate of Rs. 2959/- per gm (as mentioned in the valuation report) and the same is added back to the total income of assessee as unexplained investment u/s 69 of the I.T. Act, 1961 to be taxed u/s 115BBE of the Act.*

*(Addition of Rs. 3,35,846/-)*

*38. That it can be seen from the above observations of the AO that the assessee has never made any difference between 22kt jewellery and 22kt polki studded gold jewellery and in the books of accounts both these items were kept under one head only. One of the Department valuers also did not give any different treatment between both these items of jewellery. If the stock found at the time of survey of both these items of jewellery is taken together then the weight of jewellery of these items almost matches with the weight of these items of jewellery as per books of accounts of the assessee. The difference is only trivial being 113.50gms against total weight of the jewellery of these items with the assessee 34,943.26gms. Thus, difference in percentage being 0.32%. During the course of assessment proceedings, it was explained that such a trivial difference can be for many reasons like error occurred at the time of estimation and weighing, which is quite common in the jewellery business and difference in measurement of jewellery/studded jewellery occurs due to various factors such as humidity/moisture content/accuracy/precision/sensitivity of the measuring scale and even existence of wax used for pasting of polki and such a small difference is liable to be ignored for the purpose of*

*valuation. The existence of any of such possibility cannot be ruled out, therefore, taking cognizance of such a small difference in the stock for the purpose of making addition particularly in existence of the fact that on substantial basis all the submissions made the assessee in this regard are found true by the AO on verification made by him, is contrary to the judicial norms for framing a fair assessment of assessable income. The purpose of valuation by the Department of any asset is with a view to find out the correctness of the value of any asset so as to see and find out that whether there an attempt on behalf of the assessee to make unexplained investment. The assessee is carrying out the business of jewellery on a large scale and minor difference of 113.50 gms. out of total quantity of such kind of jewellery being 34,943.26gms. cannot be viewed from the prospective of any unexplained investment having made by the assessee and it should be ignored just as being a mistake occurred due to several factors which have been relied upon by the assessee before the AO. It is thus prayed that the addition of Rs. 3,35,846/- is to be deleted. The assessee in the later part of these submissions has explained that so far as it relates to valuation of any asset by the valuation officer, the judicial view is that the estimate made by the valuation officer if higher in the vicinity then no cognizance of valuation done by valuation officer may be taken for the purpose of making addition and valuation as per books shown by the assessee should have been accepted. Those submissions are equally applicable to this addition and also to all other additions which are impugned in the present appeal.*

*39. That so far as it relates to treating negative stock of 22kt. gold jewellery of 8,015.67gms as being sale made by the assessee outside the books of accounts and treating the sale price at a sum of Rs. 2,37,18 being assessable as turnover on which gross profit has been worked out at Rs. 16.82% thereby making an addition of Rs. 39,89,429/- [being part of addition of Rs. 1,47,26,510/-) is totally in contradiction of the findings recorded on the issue of difference between 22kt gold jewellery and 22kt polki studded gold jewellery where following findings have been recorded by the AO:*

- a. On closer perusal of the survey report and submission of the assessee, is found that the contention of the assessee appears to*

*plausible particularly when one of the valuer M/s. Amit Jewellers has also valued Polki under the category of 22 kt gold jewellery and no separate valuation has been done for the same.*

- b. It is also seen that overall combined weight of both the jewellery found during survey almost matches with that recorded in the books.*
- c. It is further noted from the sale bills that assessee is adopting consistent method of valuing polki at the applicable gold rate and as such there is no difference between the Polki studded and plain 22kt gold jewellery.*
- d. Even in the books of account, no separate maintained vis-à-vis Polki jewellery.*

*40. That having recorded all the above findings, cannot say that there was any sale of 22kt. gold jewellery which has not been recorded in the books of accounts. It has been found by the AO that even in the books of accounts the assessee is not maintaining separate inventory vis-à-vis Polki jewellery. These findings of the AO, which have been recorded by him after verification, clearly indicate that there is a manifest error in arriving at a conclusion that there was any separate stock inventory in the books of accounts of the assessee indicating separate available stock-in-hand in respect of 22kt gold jewellery and 22kt polki studded gold jewellery. When no separate inventory is prepared by the assessee of both these items of jewellery then the same cannot be compared with the separate stock found and recorded in the valuation reports which have been relied upon to say that there was quantified difference of stock-in-hand as has been worked out in the show cause notices issued to the assessee. Therefore, the very basis of making this addition does not exist and addition made is vitiated in law. It has also been recorded by the AO that even of the Departmental valuers did not differentiate both these items for the purpose of making the valuation. Thus, it is the respectful submissions of the assessee that the AO is misguided in law and in facts in firstly, treating the difference of as unexplained investment made by the assessee in stock of 22kt gold jewellery and secondly, in treating so called difference in 22kt. gold jewellery being sales made outside the books of*

accounts. Both the additions are liable to be deleted and are prayed to be deleted.

**ADDITION OF RS.62,66,511/- MADE IN RESPECT OF DIFFERENCE OF 14 KT AND 18KT GOLD JEWELLERY TAKEN TOGETHER WITH GP ADDITION OF 14KT GOLD JEWELLERY ON SO-CALLED NEGATIVE STOCK OF 11019.39 GMS VALUED AT RS.2,51,24,200/- ON WHICH GP IS WORKED OUT AT RS.42,25,890/- BEING 16.82% BEING PART OF ADDITION OF A SUM OF RS.1,47,26,510/-**

41. That the AO has relied upon the following table to workout difference alleged to be found in the stock recorded in the books and physical found of 14kt and 18 k t gold jewellery:

(In grams)

<b>Particulars</b>	<b>As per books</b>	<b>Physically found</b>	<b>Difference</b>
14Kt Gold jewellery	70,894.98	59,875.59	-11,019.39
18Kt Gold jewelleiy	7,067.76	18,540.97	11,473.21
<b>Total</b>			453.82

42. That it was submitted to the AO that weight difference in the individual category of the jewellery is actually incorrect as there was inter-mixing of the jewellery, therefore combined difference only can be taken Into consideration which is 453.82 gms and for combined difference, according to AO, the submissions of the assessee were general as nothing concrete was explained. The AO has made observations on these submissions of the assessee:

"On examination of facts gathered from record, it noted that as per survey report, there is excess physical stock of 11473.21 gms of 18Kt gold jewellery and deficit to the extent of 11019.39 gms of 14Kt gold jewellery. The assessee has submitted that there is no mention of purity of the jewellery on the tags and it can only be identified from the hallmark and that the entire stock was not hallmarked and there is clear case of intermixing of jewellery at the time of valuation by valuers. In this regard, the request of the assessee for making further enquiry from the valuers cannot be entertained at the fag end of the proceedings as the contention

*regarding estimation valuation was never made during the time of survey and also because the jewellery under question is stock-in-trade and thus can't be valued again at this stage.*

*Further, it is seen that there is short/excess of over 11 kg of jewellery in individual segment which goes against human probability. Further, had it been the case where excess stock was found in both the categories respectively or vice-versa, the assessee's explanation would have fallen fiat. However, in case where the figure of short/excess weight in individual segment complement each other and as such the possibility of intermixing of jewellery cannot be ruled out. Accordingly, would be fair to tax net excess of gold jewellery as per valuation reports i.e. Rs.62,66,511/- (Rs.3,13,90,711 - Rs.2,51,24,200) .....*"

43. *That from the above observations of the is clear that as per submission of the assessee these items of jewellery were not having any tags mentioning the purity of the jewellery and purity could only be identified from the hall marking and entire stock of the assessee was not hall marked. The jewellery was inter-mixed at the time of valuation by the valuers. All these of the assessee which are taken into consideration by the AO without any application of mind are very germane to the issue as firstly purity of gold in respect of 14kt and items cannot be ascertained by physical examination by only seeing the secondly, these items did not have any mention on their tags regarding purity the gold; thirdly, while valuing these items of jewellery these were inter-mixed. Therefore, it was physically impossible to determine the purity of gold vis-a-vis each of the item and thus, valuation reports could not be relied upon to say conclusively that how much weight of 14kt gold jewellery and how much weight is of 14kt gold jewellery when overall weight of combined jewellery of 14kt & 18kt was almost same with a minor difference of 453.82 gms in the combine stock of these items as per books is and proportionate difference comes to 0.58% of the total combined weight of these items which can only be on account of several factors explained by the assessee its submissions and such minor difference, in the light of facts and circumstances was liable to be ignored.*

44. That it can also be seen that the AO himself has accepted that possibility of inter-mixing of jewellery is not ruled out and the figure short/excess weight in individual segment compliments each other. Accepting this factual situation, it is very unfair by the AO to make addition of Rs.62,66,511/- for a minor difference of 453.82 gins which in itself shows that addition has been made without application of mind and addition itself is unfair. The difference computed by the AO is not conclusive and has to be seen in the existing facts and circumstances of the case which clearly indicates that no defect whatsoever has been found by the AO in the sales and purchases of the AO and no defect has been found in maintenance of books which are kept and maintained on the basis of consistent and recognized method of accounting. The accounts of the assessee are audited and have not been rejected. Therefore, the addition of Rs.62,66,511/- made on account of difference of 453.82 gms being alleged difference between 14kt and 18kt gold jewellery is liable to be deleted.

45. That without prejudice to the above contention that entire addition Rs. 62,66,511/- is required to be deleted, the assessee the alternative submits that since the fact of difference of 453.82gms has been accepted by the AO, the only addition can be made for difference of 453.82gms @Rs. 2,736/- gms. being per gram rate of 18kt applied by the AO as can be seen from the above table. Calculating addition on this basis the amount comes to Rs. 12,41,652/-(4x Rs. 2736/-). Therefore, the action of the AO in computing the quantum of the addition by taking the valuation difference of Rs. 62,66,493/-(valuation of 18kt. gold Rs. 3,13,90,703/- value of 14kt gold Rs. 2,51,24,209/-) of these two items contrary to the acceptance by the AO regarding the possibility of intermixing between these two items of jewellery.

46. That now coming to the GP addition of Rs.42,25,890/- being part of addition of Rs. 1,47,26,510/-, it is submitted that the AO having accepted the possibility of inter-mixing of gold jewellery items and 18kt at the time of survey is not entitled to say again that there was any negative or positive difference between these items of jewellery particularly accepting the situation that figure of short/excess weight in individual segment compliments each other. In view of acceptance of this possibility and

*factual situation, the so-called negative stock of jewellery has lost its relevance to say that there was any negative stock in the combined total of these items of the gold jewellery. Therefore, this addition has been made without application of mind by the AO and is in utter disregard of his finding given while making the addition of Rs. 62,66,511/-. The relevant finding of the AO while addition of Rs. 62,66,511/- have already been reproduced above part written submission.*

*47. That in view of above submissions the addition of Rs. 62,66,511/- and addition of Rs.42,25,890/- are liable to be deleted and it is prayed so.*

*ADDITION OF RS.2,11,27,468/- MADE IN RESPECT OF SO-CALLED EXCESS DIAMONDS FOUND DURING SURVEY AND ON SO-CALLED NEGATIVE STOCK OF 1665.53 KT DIAMOND STUDDED IN 14 KT JEWELLERY VALUED AT RS.3,87,10,998/- ON WHICH GP IS WORKED OUT AT RS.65,11,190/- BEING 16.82% BEING PART OF ADDITION OF A SUM OF RS.1,47,26,510/-*

*48. That this issue has been discussed by AO at pages 14 and 15 of the assessment order. For making addition, the AO has referred to the following chart as inscribed in the assessment order at page 14 and for the sake of completeness the said chat is reproduced below:*

*(In grams)*

<b>Particulars</b>	<b>As per books</b>	<b>Physically found</b>	<b>Difference</b>
<i>Diamond studded in 14Kt Gold Jewellery</i>	<i>15,074.36</i>	<i>13,408.83</i>	<i>-1,665.53</i>
<i>Diamond studded in 18 Kt Gold Jewellery</i>	<i>2,112.71</i>	<i>4,501.61</i>	<i>2,388.90</i>
<b>Total</b>			<i>723.37</i>

*49. That on this point the AO has made two additions. First addition has been made by the AO by treating the difference between combined quantity of diamonds studded in 14kt & 18kt gold jewellery which according to the books of accounts assessee is a quantity of 17187.07 carats and as per physically found of 17910.44 carats. Thus, as per above table the difference comes to be 723.37 gms (17910.44 17187.07). Since the excess was only in jewellery diamonds, the value according to*

valuation report at the rate per carats was adopted and addition of Rs.2,11,27,468/-has been worked out (723.37 kt into Rs.29,207/- per carats).

50. That second addition has been made by treating the less during the course of survey in respect of 14kt jewellery studded with diamonds which has been treated as sales made outside the books of account and GP has been worked out on the value of 1665.53 carats of diamonds. The value of such diamonds has been calculated at Rs.3,87,10,998/- and GP @ 16.82% has been worked out at Rs.65,11,190/-which has been treated as part of gross addition of Rs. 1,47,26,510/-.

51. That coming to first addition of Rs.2,11,27,468/-, it can be seen from the assessment order that there was inter-mixing of and 18kt gold jewellery including such jewellery studded with diamond and reference in this regard can be made to the findings of the AO recorded for addition of Rs.62,66,511/- and which findings are also reproduced in the above part these submissions. The AO has observed that "as such the possibility of intermix cannot be ruled out". In this background he has accepted the situation to take combined weight of diamonds studded in 14kt and 18kt gold jewellery and after combining both these items he has considered and calculated the difference at 723.37 carats which has been valued at Rs.2,11,27,468/-.

52. That so far as it relates to quantity difference of 723.37 carats of diamonds which were studded in 14kt and 18kt gold jewellery, the assessee had disputed the valuation reports of the Departmental valuers on the issue of counting and measuring the weight of diamonds which was done on estimate basis contending that the net difference of 723.37 carats is attributable to estimation error. It was that there could be no case of excess embedded diamonds as the quantity and weight of diamonds embedded in jewellery is fully corroborated from the inventory maintained. It was also submitted that excess diamonds so calculated by valuers could not have been embedded in the available jewellery.

53. That the AO has rejected all the above submissions/contentions without any application of mind and also rejecting the request of the assessee for seeking clarification from the valuers regarding the basis

*adopted for calculating the weight of the embedded diamonds on the ground that such belated request is not acceptable.*

*54. That it has been pointed out in the earlier part of these submissions that the sole base of the impugned additions made by the AO rests upon the valuation reports and also legal submissions have been made that the valuation obtained by the Department during the course of survey does not have legal sanction on account of having been obtained without express authority and without prejudice such legal submissions, the assessee also contends that even valuation done by the Department has legal sanction then also the valuation is only subjective and represent estimated value of the asset and Id. AO has also accepted the fact that there is a reasonable degree of estimation employed by the expert, valuer is permissible. Referring to these observations of AO, it is the contention of the assessee that if valuation reports are based on reasonable degree of estimation employed by the expert valuer, then the said reasonable degree of estimation employed has also to be eliminated for the purpose of making fair assessment.*

.....

*56. That relying upon afore mentioned decisions in the case of the assessee that the difference in combined quantity of diamonds studded in 14Kt and 18kt of gold jewellery is only 0.93% of the total 14kt and jewellery recorded in the books of assessee (723,37 carats diamonds divided by total quantity of 14Kt and 18Kt gold jewellery of 77962.74 gms and as per above judicial proceedings such difference is required to be ignored and no adverse inference can be drawn on account of trivial difference which is due to estimation only.*

.....

*58. That with regard to alleged difference of weight between and gold jewellery it was submitted before AO that there is no mention of purity of the jewellery on the tags and it can only be identified from the hallmark and then the entire stock was not hallmarked and there is a clear case of intermixing the jewellery at the time of valuation by the valuers. In this background the assessee had requested the AO to make fresh inquiries or*

*estimation to rule out any such possibility. However, AO has rejected such contention of fresh estimation on the ground that such request of the assessee cannot be entertained at the fag end of the proceedings. Despite having rejected such contention, Id.AO has observed that view of the fact that the figure of short/excess weight in individual segment complement each other and as such the possibility of intermixing of jewellery cannot be ruled out. Therefore, the AO has accepted that the stock of 14kt and 18ktgold jewellery which also included diamond studded jewellery as part and parcel thereof has to be considered together for the purpose of working out difference which has eliminated the factor of seeing short/excess separately for the purpose of determination of computing short/excess in respect of individual segments of 14kt and 18kt jewellery to enable the AO to make addition either of so-called excess stock found during the course of survey as compared to books or to treat the short stock having been sold outside books of accounts and to workout GP on such so-called sales made outside the books of account. It is due to such elimination of factor the AO has not made any addition segment wise. When segment wise difference has been eliminated between and 18kt diamond studded gold jewellery and the segments have not been treated separately, it is highly arbitrary to make addition of GP in respect of one segment treating it differently being short on account of its sale outside the books of account.”*

37. After going through the entire facts,

- The Id. CIT(A) confirmed the addition of Rs.3,35,846/- being unexplained investments u/s 69 on account of excess stock of 22 Kt. Gold and Polki jewellery of 113.5 gms.
- The Id. CIT(A) restricted the addition to Rs.12,41,652/- from the addition made by the AO of Rs.62,66,511/- being unexplained investments u/s 69 on account of excess stock of 18 Kt./14 Kt. Gold of 453.82 gms.
- The Id. CIT(A) confirmed the addition of Rs.2,11,27,468/- being unexplained investments u/s 69 on account of excess stock of diamonds of 723.37 carats.

- The Id. CIT(A) deleted the addition of Rs.1,47,26,510/- made on account of estimation of gross profit.

38. Aggrieved, the assessee filed appeal before the Tribunal and there was no appeal by the Revenue on account of the deletion of addition of Rs.1,47,26,510/-.

39. Before us, the Id. AR in addition to the submission made before the Id. CIT(A) relied on the letter dated 07.07.2021 filed before the DCIT during the assessment proceedings. The same is as under:

*"July 7th, 2021*

*Dy. Commissioner of Income Tax,  
Central Circle-19,  
Delhi*

*Ref. : M/s Chawla Jewellers, PAN : AA AFC4490J*

*Sub.: Assessment Proceedings u/s 142 (1) of the Income Tax Act, 1961 for A.Y. 2018-19*

*Sir,*

*In continuation of our replies filed earlier explaining the alleged difference between stock found during survey and as recorded in the books of account it is submitted that the alleged differences in various segments of jewellery as per the valuation reports are unrealistic and cannot be made the basis for drawing adverse inference against the assesses We have already highlighted the key discrepancies and inconsistencies in the valuation reports which are reiterated again for sake of ready reference:*

*i. The fact of inter-mixing of 18 kt and 14 kt of jewellery resulting in huge differences in individual segments. No criteria have been given for correctly identifying the gold purity of each jewellery item.*

ii. *Basis for measuring diamond weight in a studded jewellery item not given. It is not known as how the number of diamonds and their weight in carats was ascertained.*

iii. *Valuation of diamond is full of subjectivity and no objective criteria based on purchase value of diamond by assessee was adopted resulting in arbitrary high valuation.*

iv. *Highly inconsistent approach in weighing and valuation of Polki studded jewellery by both the valuers.*

*In addition to above, the degree/level of estimation involved in valuation also has significant impact while making comparison with recorded stock.*

*Keeping in view the above and object and spirit of the assessment proceedings under the Income Tax Act, it is humbly requested that in the interest of justice and fair assessment, necessary enquiries to ascertain estimation involved, process of valuation etc. may be made from independent sources such as internet, jewellery experts, third party valuers or even the valuers from whom the reports in the present case were obtained so that the appropriate adjustments could be made to the figures appearing in the valuation report."*

40. Referring to the tables submitted before the revenue authorities which are reflected at earlier pages of this order, the Id. AR submitted as under:

- As it can be seen that combined weight of 22KT gold jewellery and 22KT polki jewellery is in consonance with the same items of jewellery in the books of account except a difference of 113.50 grams (22KT polki gold jewellery 8,129.170 gram (-) 8015.67 grams 22KT gold jewellery). The ITO has accepted the fact of mixing of both these items of jewellery at the time of valuation and considered

the excess of 113.50 grams of gold for purpose of making addition and taking a rate of Rs. 2,959 per gram has made an addition of Rs. 3,35,846/- to the income of the assessee.

- Further, it can be seen from above table that there are two other items of gold jewellery which are 14KT gold jewellery and 18KT gold jewellery. It can be seen that there is a difference of weight 11019.39 grams which is less than the jewellery of MKT gold as per books of account. Similarly, there is difference of 11473.21 grams which is more than the jewellery of 18 KT as per books of the assessee. After taking into consideration all the facts that there was intermixing and there were missing tags on the items of jewellery and these jewellerys were weighted together, the possibility of intermixing was accepted and only difference of gross weight of 453.82 grams was considered for addition and addition made by the AO of sum of Rs. 62,66,511/- (being difference between the value of Rs. 3,13,90,711/- and Rs. 2,51,24,200/-) has been reduced by Ld. CIT(A) to a sum of Rs. 12,41,652/- (453.82 grams \* 2,736) by adopting the rate of gold at a sum of Rs. 2,736/- per gram in respect of difference of 453.82 grams.
- Third addition is with respect to alleged difference of 723.90KT in the diamonds studded in 14KT and 18KT gold jewellery for which the intermixing has been accepted.
- Referring to the valuation report submitted at page 243 to 253 of the paper book, the Id. AR argued that it can be seen from the valuation reports that the valuation report is not in respect of individual items of jeweller instead, the

valuers have taken bulk of jewellery together for weight and have done the valuation. It is physically impossible to weigh each and every item separately identifying the purity of gold and weight of gold and stones studded thereon on a given single day. Therefore, there is possibility of error in making weighment and assessing the purity and ascertaining the weight of each item separately viz-a-viz quantity of metal and stone. In any case, the weight of metal and stone as well as quality and numbers indicate that there was no other manner except to make an estimate with regard to weight and value, which estimate is bound to differ even if the same person evaluate the same thing at a different time. It is only, in specific circumstances to remove such error in the estimates, the principle regarding acceptance of margin of error tolerance has been recognized as per statutory as well as by the judicial pronouncements. For example, whenever, valuation is made with reference to section 142A of the Act by the valuation officer who is a government functionary, even the courts have held that there is every possibility of variation in the estimating the value and therefore, it has been held that margin of error up to 10% is permissible in the estimate and if the valuation by the assessee falls within 10% margin of error, no addition would be called for. Similar provision is also described in section 50C of the Act wherein as per third proviso permits 10% variation in the consideration received as a result of transfer when it is compared to the value adopted or assessed by stamp valuation authority. Similarly, clause (x) of sub-section (1) of section 56 of the Act also provides margin of 10% of

consideration. Looking in to this aspect, even if the contention of the assessee is accepted that there is no evidentiary value of valuation reports obtained by AO during the course of survey proceedings, the assessee pleads that while making the addition the margin of error may be considered and such error in estimating the value and quantity is very much below the permissible margin of 10%. For substantiating such contention, the assessee is relying upon the following decisions:

- a) Honest Group of Hotels Ltd. vs. CIT [2002] 123 Taxman 464 (J&K)
  - b) CIT vs. Pratapsingh Amrosingh Rajendra Singh & Deepak Kumar [1993] 200 ITR 788 (Rajasthan)
  - c) Smt. Sita Bai Khetan vs. ITO [2017] 88 taxmann.com 377 (Jaipur - Trib.)
  - d) Surendra S. Gupta vs. Addl. CIT [2018] 93 taxmann.com 456/170 ITD 732 (Mum. - Trib.)
  - e) ITO vs. LGW Ltd. [2017] 83 taxmann.com 68 (Kol. - Trib.)
- With regard to the addition of Rs.3,35,846/-, the assessee submitted that they are maintaining one account of 22KT gold jewellery which includes 22KT gold polki jewellery as well as 22KT gold jewellery. It can be seen from the table reproduced above that combined weight of both these items of jewellery is 34,943.46 grams and difference as per estimated weight is only of 113.50 grams. The percentage of such difference viz-a-viz gross weight of these items is only 0.32 percent and it has been explained above that in what manner the jewellery was weighed and

valued, there is every possibility of error in estimation. It was argued that in such a large quantity the difference of 113.50 grams must not be adversely taken to hold that the same is unexplained.

- With regard to the addition of Rs.12,41,652/-, it was argued that there was inter-mixing of the items of gold jewellery of 14KT and 18KT which was also diamond studded. The fact of intermixing is even accepted, it can be seen from the table reproduced above that combined weight of both these items of jewellery as per books is 77,962.74 grams and difference as per estimated weight is only of 453.82 grams. The percentage of such difference viz-a-viz gross weight of these items is only 0.58 percent and it has been explained above that in what manner the jewellery was weighed and valued, there is every possibility of error in estimation. In such a large quantity the difference of 453.82 grams must not be adversely taken to hold that the same is unexplained.
- With regard to the addition of Rs.2,11,27,468/-, it was argued that his addition is in respect of alleged difference in the weight of diamond studded in the items of 14KT and 18KT gold jewellery which after combining both these items has been calculated in the above table at 723.90KT which have been valued at a sum of Rs. 2,11,27,468/- and the addition has been made. It was submitted that these diamonds are never separated from the gold jewellery in which these were studded. The weight has been extracted from the gross weight of these items of the jewellery. It has been submitted that gross weight of these item of

jewellery as per books was 77,962 grams. It is a matter of general prudence that unless, the studded diamonds are separated from the jewellery, its exact weight cannot be ascertained precisely. It is very difficult even for the valuer to state the separate weight of studded diamonds precisely. Thus, the weight stated in the valuation report was only an estimated weight. The assessee had submitted all the details and accounts before the AO and also details regarding all purchases and sales. The accounts of the assessee are audited in which no defect, whatsoever, has been found by the AO, therefore, simply based on weight of studded diamond estimated by the registered valuers, it cannot be inferred that there was any actual difference in the weight of the diamond studded in the jewellery. The rule of margin of error is equally applicable for this addition also. From the facts mentioned above it has been submitted that gross weight of diamond studded in 14KT and 18KT gold jewellery is 77,962.74 and difference as per estimated weight is only of 723.37 KTs. The percentage of such difference viz-a-viz gross weight of these items is only 0.93 percent and it has been explained above that in what manner the jewellery was weighed and valued, there is every possibility of error in estimation. It was argued that in such a large quantity the difference of 723.37KTs must not be adversely taken to hold that the same is unexplained.

41. The Id. DR submitted that the revenue has not filed appeal against the deletion made by the Id. CIT(A) and relied on the order of the Id. CIT(A).

42. Having gone through the entire factum, we find from the table that the total weight of items of 22KT Gold jewellery and 22KT Gold Polki jewellery was 36,943 gms and as per the estimated value, the difference was of merely 113.50 gms. which is 0.32%. While weighing more than 34,000 gms of jewelley, the difference of 113 gms. could be considered as an error and no adverse inference cannot be drawn on this issue. With regard to inter-mixing of gold jewellery of 18KT and 14KT, from the table above, we find that the combined weight of the jewellery was 77,962 gms. and the difference was 453 gms. which is 0.58%, hence, the difference of 453 gms. could be considered as an estimation error and no adverse inference cannot be drawn on this issue. With regard to the difference in the weight of diamond in studded jewellery items of 18KT and 14 KT gold jewellery, the excess diamond has been determined at 723 carats. From examination of the valuation report prepared by the authorized valuer at the time of the survey, we find that the diamonds have never been separated from the gold jewellery. The weight has been extracted from the gross weight. The total jewellery as per books was 72,962 gms. In the absence of specific findings and tags describing the weight of the jewellery in terms of gold and diamond separately, the weight stated in the valuation report can be considered as near estimations but not absolute weight. Under these factual circumstances, it is clear from the record that the weight of the diamond has not been arrived at fittingly. Hence, keeping in view, the entire facts and circumstances that there has been excess diamonds determined at one showroom of 14KT and shortage determined at the another showroom and keeping in

view the fact that the diamonds have not been separately weighed, we hold that no addition is called for on this ground.

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

Order Pronounced in the Open Court on 08/11/2023.

Sd/-

**(Astha Chandra)**  
**Judicial Member**

**Dated: 08/11/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

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

**ASSISTANT REGISTRAR**