

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI  
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
ITA No. 3062/Mum/2022  
(A.Y: 2017-18)

M/s Mangal Royal Jewels Pvt Ltd. 29C, Shyam Kamal Co-operative Housing Society Ltd, Agarwal market, M.G. Road, Vile Parle (E), Mumbai-400057.	Vs.	ACIT-CC-1(3), Room No.905, 9 <sup>th</sup> Foor, Old CGO Bldg,Annexe, M.K. Road, Mumbai-400020.
PAN/GIR No. : AAICM0846R		
Appellant	..	Respondent

ITA No. 3274/Mum/2022  
(A.Y: 2017-18)

Dy.CIT-CC 4(3), Central Range-4, Room No.1921, 19 <sup>th</sup> Floor, Air India Bldg, Nariman Point, Mumbai-400021.	Vs.	M/s Mangal Royal Jewels Pvt Ltd. 29C, Shyam Kamal Co-operative Housing Society Ltd, Agarwal market, M.G. Road, Vile Parle (E), Mumbai-400057
PAN/GIR No. : AAICM0846R		
Appellant	..	Respondent

Appellant/Respondent by :	Mr.Poojan Mehta.AR
Respondent/Appellant by	Mr.Prakash Kishinchandani.DR

Date of Hearing	08.09.2023
Date of Pronouncement	28.11.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The cross appeal is filed by the assessee and the revenue against the order of the Commissioner of Income Tax (Appeals) – 47, Mumbai passed u/sec250 of the Act.

2. We shall take up revenue appeal-ITA.No. 3274/Mum/2022 A.Y 2017-18 as lead case and facts narrated. The revenue has raised the following grounds of appeal:

1. *The Ld. CIT(A) erred in restricting the addition of Rs. 1,36,56,317/- Rs.2 Crore to Rs. 2,70,000/- considering only difference in Net Profit on entire sale vis-à-vis Net Profit on this sale without appreciating the fact that the assessee has not proved the actual sale of gold made against the receipt of Rs. 2 crores from M/s. Dyaneshwari Multi-State Co-Op. Credit Society Limited and without considering the statement of Shri Nilesh Kamble wherein it is stated that "as per the instructions of Mr. Akhilesh Joshi, the overall head of Mumbai Branch of the society, the total cash of Rs. 2 crores was deposited into the bank account of the society and thereafter an equivalent amount was transferred through RTGS to the assessee in four tranches"*

2. *"The Ld. CIT(A) erred in restricting the addition of Rs. 79,00,000/- to Rs. 1,06,650/- considering only Rs. 53,94,245/- difference in Net Profit on entire sale vis-à-*

*vis Net Profit on this sale without appreciating the fact that the assessee has not submitted documentary evidence of actual delivery and sale of the Gold."*

*3. "The Ld. CIT(A) erred in deleting the addition of Rs.5,00,000/- being unexplained expenditure without appreciating the fact that Shri Ashit Doshi in his statement u/s. 132(A) of the Act has stated that the assessee had given Rs.84,00,000/- to Shri Ashit Doshi and had brought back Rs79,00,000/- as bogus sale bills in its books, further, commission of Rs.5,00,000/- paid to Shri Ashit Doshi for arranging the transaction is an unexplained expenditure incurred by the assessee."*

*4. The Ld. CIT(A) erred in deleting the addition of Rs. 5,55,30,000/- without appreciating the fact that the assessee has not submitted documentary evidence of actual delivery and sale of the Gold."*

*5" The Ld. CIT(A) erred in restricting the addition of Rs. 3,27,77,981/ to Rs.4,42,503/- considering only difference in Net Profit on entire sale vis-à-vis Net Profit on this sale without appreciating the fact that the assessee has not submitted documentary evidence of actual delivery and sale of the Gold."*

3. The brief facts of the case are that, the assessee company is engaged in the business of manufacturing and trading of gold and jewellery and trading in bullion. The assessee has filed the return of income for the A.Y 2017-18 on 30.10.2017 disclosing a total income of Rs. 62,31,050/- and the return of income was processed u/s 143(1) of the Act. There was search and seizure

operations u/sec 132(1) of the Act was conducted on the assessee premises by the DDIT (Inv), Mumbai on 7-4-2017 and the notice u/sec 153A of the Act was issued. In compliance to the notice, the assessee has filed the return of income on 14.02.2018 disclosing a total income of Rs.62,31,050/-. Subsequently, notice u/sec 143(2) and U/sec142(1) of the Act are issued. The Assessing Officer(AO) found in the course of search that the assessee has made huge cash deposits in the Bank account and the assessee has also received RTGS from various parties. The Assessing Officer (AO) on the first disputed issue, found that the assessee has sold gold valued of Rs.2 crores to M/s. Dyaneshwari Multi State Cooperative Credit Society Ltd and the sale proceeds in the sale bill are disclosed as RTGS, whereas in order to examine the genuineness of the sale transactions statement u/s 131 of the Act of Mr. Nilesh A. Kamble Branch Manager of M/s. Dyaneshwari Multi State Cooperative Credit Society Ltd was recorded on 07.04.2017.

4. The A.O dealt on the facts, statement recorded, and evidences filed by the assessee in support of claim being invoice copy, Pan of the purchaser, ledger account copy , and bank statements. Further the A.O has recorded the statement of the director of the assessee company.

Whereas the A.O was not satisfied with the supporting evidences and details and invoked the provisions of section 68 of the act and made addition of Rs.2 Crores as unexplained cash credit.

5.The second disputed issue is with respect to sale of bullion to four entities, (i) Aman Trading of Rs. 17,99,550; (ii) Aman Trading Enterprises of Rs. 17,99,500/-; (iii) Marina Trading of Rs. 21,50,500/-; Pradip Trading of Rs. 21,50,000/- all aggregating to Rs. 79,00,000/-. The AO has dealt on the statement of Mr. Ashit Doshi, and on the sale bills of the assessee provided to the aforesaid entities. Whereas the AO has not accepted the contentions of the assessee that, the transactions of sale of bullion to the parties are genuine and supported with the documentary evidences i.e photocopies of sales invoices and bank statements evidencing receipt of sale consideration vide letter dated 21.11.2019. Further contentions of the assessee are that there is a violation of the principles of natural justice as the statement of Mr. Ashit Doshi was recorded behind the back of the assessee and the AO ought to have provided a copy of statement to confront the parties, but the A.O has relied on the statement recorded and made an addition of Rs.79 lakhs.

6. On the third disputed issue, The AO alleged that the assessee must have paid commission for obtaining the bogus bills of Rs.79 Lakhs. The assessee's contentions are that the Investigation team has not found any material or document would indicate that the sales are not genuine. Whereas the A.O has made an adhoc addition of expenditure of Rs.5 lakhs u/s 69A of the Act.

7. On the fourth disputed issue, The AO found that the Assessee has made cash deposits aggregating to Rs. 5,55,30,000/- during the demonetization period and the A.O has issued notice to explain the sources of deposits with the evidences. In compliance to the notice, the assessee has filed details on 21.11.2019 referred at Para 8.2 of the assessment order. Whereas the AO has perused the submissions and was not satisfied with the explanations and the various details filed by the assessee. The AO observed that the quantity of gold /jewellery sold in cash was prior to the demonetization period to its group entities. Whereas the A.O of the view that the actual cash sales could not be properly substantiated by the assessee with evidences. further the A.O has rejected the books of accounts and made addition as unexplained cash credits U/sec68 of the Act of Rs.5,55,30,00/-.

8. The Last disputed issue, the A.O found that the assessee has received RTGS credits transfers for the sale of gold/ jewellery from various parties. The A.O has issued notice dated 15.11.2019 to explain the sources of credits. Whereas the assessee has filed the information of sales made through the banking channels and supported with the documentary evidence i.e sales invoice, ledger account copy of purchasers and bank statements to prove the genuineness of the transactions. Whereas the A,O was not satisfied with the sales made to the parties and the evidences filed in support of claims of the assessee, does satisfy the genuineness of the sale transactions and has rejected the claims and made addition u/sec68 of the Act of Rs. 3,27,77,981/-. Finally the assessing officer has assessed the total incomers.12,29,39,031/-and passed the order U/sec143(3)r.w.s153A of the act dated 26-12-2019.

9. Aggrieved by the order, the assessee has filed an appeal before the CIT(A) challenging additions and disallowances made by the A.O. In the appellate proceedings, the assessee has filed the voluminous details in respect of the total claims all relating to cash sales and bank credits of RTGS. whereas the CIT(A) considered the grounds of appeal, statement of facts, submissions of the assessee, findings of

the AO and dealt extensively on the facts and provisions of the Act and judicial decisions and directed the Assessing officer to delete the additions and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

10. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in directing the AO to delete the addition to the extent of Rs.1.97 crores though the assessee has not proved actual sale of gold. The Ld. DR also emphasized that the CIT(A) has erred in allowing the relief to the extent of Rs.77.93 lakhs as against of Rs.79 lakhs being added by the A.O. though the assessee has not submitted any documentary evidence of actual delivery of gold and on the third disputed issue, the CIT(A) has erred in deleting the addition of Rs, 5 Lakhs made by the AO on account of unexplained expenditure on accommodating entries obtained from third parties. Further the CIT(A) has erred in deleting the deposits of Rs.5.53 crores in the bank accounts by the assessee during the demonization period overlooking the observations of the Assessing Officer. Further the Ld.DR submitted that the CIT(A) has erred in deleting the RTGS credits to the extent of Rs.3,23 crores,

though the assessee has not filed evidences of actual sale of gold to parties and supporting evidences. And the CIT(A) has erred in ignoring the findings of the Assessing Officer in the assessment proceedings on all the additions and supported the order of the Asseesing Officer and the Ld. DR prayed for allowing the revenue appeal.

11. Per Contra, the Ld.AR submitted that the AO has not considered the various details filed with respect to the disallowances and further the additions are made arbitrarily and no adequate opportunity of hearing was provided. The Ld. AR emphasized on the each ground of appeal of the revenue and made exhaustive submissions on the disputed issues and the Ld.AR supported the order of the CIT(A) to the extent of the relief granted to the assessee. Further the Ld.AR substantiated the submissions with the factual paper book and judicial decisions.

12. We heard the rival submissions and perused the material on record. The Ld. DR submitted that the CIT(A) has erred in deleting addition of Rs.1.97 .Crs as the AO has made addition based on the statement u/sec131 of the Act, whereas the Ld.AR submitted that the CIT(A) has

considered facts that the addition was made without any corroborative evidences. We find that the CIT(A) has considered the written submissions of the assessee dealt at Para 8.1.1 of the order as under:

*“8.1 During the course of the appellate proceedings, the appellant had filed written submission in the following manner:*

*3. Re-Ground of appeal no 2 - Addition under section 68- Rs. 2,00,00,000*

*3.1. The Assessing Officer made an addition of Rs 2,00,00,000 under section 68 of the Act, being the amount received from Dyaneshwari Multi State Urban Credit Coop Society Ltd (hereinafter referred to as the Society) on account of sale of bullion, alleging that the same is introduction of unaccounted money in the books of account*

*3.2. The Assessing Officer made the impugned addition for the following reasons-*

*3.2.1. Mr Ajit Jain, director of the appellant-company did not remember the transaction with the Society (refer Q. 21 of the statement on oath dated 09.04.2017) but confirmed the transaction, when the sale bill was shown to him on the date of survey on 09.04.2017;*

*3.2.2. Mr Ajit Jain did not remember the person who delivered the bullion to the Society;*

*3.2.3. Mr Ajit Jain did not remember the name of the person receiving the bullion 3.2.4. P.A. No of the Society does not bear a photograph;*

3.2.5. *The office of the Society though located in Zaveri Bazar, which is the hub of gold and bullion trade, purchased such bullion from the appellant-company in Vile Parle;*

3.2.6. *The appellant-company has taken signature of an unknown person on the bill of the Society without any name or identification.*

3.2.7. *The appellant-company has delivered the gold bars to an unknown person at the office of the Society and the appellant-company does not have any documentary evidence of actual delivery of the gold bars to the Society*

3.2.8. *Statement of Mr Nilesh Kamble Mr Nilesh Kamble in his statement on oath dated 07.04.2017 stated that he does not remember whether the Society has purchased bullion from the appellant-company;*

3.2.9. *In the statement on oath, Mr Nilesh Kamble stated that "as per the instructions of Mr Akhilesh Joshi, the overall head of Mumbai Branch of the society, the total cash of Rs 2 crores was deposited into the bank account of the society and thereafter an equivalent amount was transferred through RTGS to the assessee in four tranches" refer para 6.1. page no 2 of the assessment order. Mr Nilesh Kamble stated that as informed by Mr Akhilesh Joshi, the cash of Rs 2 crores was to be delivered by a person related to Mr Patel Mama and as per the instructions of Mr Akhilesh Joshi the said amount was credited to the account of Prathmesh Enterprises.*

3.2.10. *Mr Nilesh Kamble further stated that apart from the said transaction, no other business transaction was carried out between the appellants and the society-refer para no 1.3 of show cause notice dated 15.10.2019 - refer page no 37 of the paper book.*

*Contentions*

3.3. The appellants contend that the impugned transaction of sale of bullion to the Society is supported by various documentary evidences given below -

a photo copy of sale invoice-refer page no 80

b photo copy of the PAN card of the Society - refer page no 81

c. ledger account of the aforesaid party in the books of account of the appellants refer page no 79

d. bank statements evidencing receipt of the sale consideration refer page no

93 of the paper book.

3.4The appellants contend that the reasons given by the Assessing Officer, narrated in point no 3.2 above are vague and insufficient inasmuch as-

3.4.1. Re statement on oath of Mr Ajit Jain —

(a) It is highly contentious of the Assessing Officer to expect that a person should remember the name of all the parties with whom high value transactions have been executed specially in the case on hand, after nearly 5 months from the date of transaction (17.11.2016). It is human tendency to remember only the names that are in one's contact frequently. Though the transaction is one of the high value transactions, it can be that the name of the person be not remembered who has just visited once for a one-off transaction. Further, the appellants are engaged in retail trade and hence, come in contact with so many persons that it may be difficult to remember the name of each and every person with whom transactions have taken place.

(b) It is difficult for any person to remember precisely insignificant things, such as name of delivery boy who has

*delivered goods to one-off customer, that too, under the daunting pressure of an on-going search action. Mr Ajit Jain, after some efforts, recollected the name of the delivery boy Mr Shankar Kumavat, who would have made the delivery to the Society. However, he may not be very, sure due to the passage of time of nearly 5 months from the date of transaction. It would not be out of place to mention that confirmation of delivery in today's day and age is simpler and fool proof telephonically with the help of smart phones.*

*(c) PAN card of a non-individual person does not bear a photograph The Assessing Officer ought to have thus, known the fact that PAN card of the Society would not bear a photograph and that a PAN card is issued by the Income-tax Department;*

*(d) The parties to a transaction are entitled to arrange their affairs in such a manner that are most convenient to them and the Assessing Officer cannot sit in the armchair of a businessman and decide the manner in which the business should be f conducted*

*3.5 The appellants submit that the Assessing Officer in making the impugned addition relied on the statement on oath of Mr Nilesh Kamble, branch manager of the Society, recorded under section 131 of the Act - in this, we submit that -*

*3.5.1 There is gross violation of the principles of natural justice inasmuch as the said statement recorded on 07.04.2017 at the premises of the Society was behind the back of the appellants and the Assessing Officer ought to have provided a copy of the same to the appellants before using the statement on oath against the appellants. Further, Mr Ajit Jain, Director of the appellant-company when shown the statement of Mr Nilesh Kamble at the time of recording his statement on oath on 09.04.2017, disagreed with the version of Mr Nilesh Kamble, and hence, the Assessing Officer was duty-bound to give an opportunity of cross-examination to the appellantsIt would not*

*be out of place to mention that cross-examination is not given in spite of a specific request being made by the appellants to the Assessing Officer- refer letter dated 21.11.2019 of the appellants filed with the Assessing Officer at page nos. 51 to 106 of the paper book. Accordingly, such statement on oath cannot be relied upon and ought to be ignored.*

*3,5.2. The abovementioned statement is recorded under section 131 of the Act without any corroborative evidences and as such, aforesaid statement does not have any evidentiary value.*

*3.5.3. Mr Nilesh Kamble in his statement on oath stated "as per instructions of Mr Akhilesh Joshi, the overall head of Mumbai Branch of the society, the total cash of Rs. 2 crores was deposited into the bank account of the society and thereafter an equivalent amount was transferred through RTGS to the assessee in four tranches". refer para 6.1. page no 2 of the assessment order and thereafter, stated that apart from the said transaction, there was no other business transaction done for MRJPL with the Society - refer para no 1.3 of show cause notice dated 15.10.2019 - refer page no 37 of the paper book.*

*Thus, Mr Nilesh Kamble himself confirmed the impugned transaction of the Society with the appellant-company when he states that "no other business transaction" of done between the appellants and the Society. However, it can be inferred that he may not be aware of the impugned transaction as he states in his statement that it is at the instructions of a superior authority Mr Akhilesh Joshi. Thus, not much reliance can be placed on his statement in respect of the sale and non-receipt of gold bar by the Society.*

*3.5.4. The appellants contend that there being contrast views expressed by Mr Nilesh Kamble and Mr Ashit Doshi, the Assessing Officer has conveniently accepted the version of Mr Nilesh Kamble ignoring the evidentiary value of the statement on oath of Mr Ajit Jain, which in law is not correct.*

3.5.5. *The statement is not recorded in the presence of the appellants, and hence, the same cannot be treated as conclusive evidence unless confronted to the appellants, for rebuttal. The Assessing Officer has not allowed cross examination by the appellants of Mr Nilesh Kamble. It could well be that due to prevailing adverse situation, Mr Nilesh Kamble was compelled to accept something which is not the fact or he must have stated something to put himself out of harm's way of any future legal proceedings or he would have stated as instructed.*

*In view of the above, the appellants contend that the impugned addition is baseless and ought to be deleted.”*

13. Whereas the CIT(A) has dealt on the facts and the information and has deleted the addition as the assessee has filed the material evidences in support of claims in the proceedings and observed at Para 8.2 to 8.9 of the order as under:

*Decision on Ground No. 2*

*“8.2 Briefly the facts related to the issue under consideration are that a Search and Seizure action was carried out in the case of the appellant company on 07/04/2017. During the course of search operation, statement of Mr. Ajit Jain, director of the appellant company was recorded, which was also confirmed in the statement recorded during the assessment proceedings before the AO. During the assessment proceeding, the AO has issued show cause notice on 15.10.2019 wherein the appellant was enquired as under-*

*RTGS credit entry (shown as sale entry) in the books of MRJPL from the Society of Rs. 2,00,00,000/- appears to be unexplained cash credit in the books of accounts of M/s Mangal Royal Jewels Pvt. Ltd. liable to be taxed u/68 of the*

Act for A.Y. 2017-18. And also to show cause that why not to reject the book of account of the Assessee.

8.3 The appellant filed reply against the Show Cause Notice dated 21.11.2019 issued by the AO, wherein it is contended that.

8.3.1 The appellant Company is engaged in the business of wholesale and retail trading of gold bar, ornaments & diamond studded jewellery, silver jewellery & articles since last six years. The company is having valid GST Registration and also had a valid CST/VAT registration. Further the company has regular filed all kind of statutory returns viz., VAT return, Income tax returns or be it Annual returns at ROC. Further, TIN and PAN are always mentioned on the invoices and the same have been duly accounted for in the books of accounts. The transactions with M/s. Dyaneshwar were also of purchase of gold bar from M/s Mangal Royal Jewels Pvt Ltd against which the seller has issued valid invoice & the gold bars were delivered to buyer. Also, the company have paid VAT on this sale transaction. The company has shown this transaction in its statutory audit as well as tax audit report along with quantitative details of stock.

8.3.2 It is further stated before the AO that during Search & Seizure action carried out at the premises of the appellant on 08.04.2017 by the Investigation Wing, Mumbai, the search team has physically verified the stock of M/s Mangal Royal Jewels Pvt Ltd kept at its showroom. The stock was also valued by an independent Government appointed registered valuer at the time of search. There was no discrepancy found between physical stock and stock in the books of accounts. According to the appellant, only inference that could be drawn was that physical sale of gold during the year & sale recorded in the books of accounts were not in divergence.

8.3.3 According to the appellant, since the statements of other parties were not recorded in the presence of the appellant, that cannot be treated as conclusive evidence unless

*confronted. The statement of Mr. Nilesh Kamble was neither confronted with any responsible person of the appellant co. nor was cross examined in appellant's presence. It is further contended that there are T. of possibilities that there were adverse situation or Mr. Nilesh Kamble had compelling situation to accept something which was not the fact or to put themself out of the part of any legal proceeding in future or they would have stated as instructed. According to the appellant, it was as per natural law & justice that the AO would have offered the assessee an opportunity of cross examination & the statement was duly confronted. It is further stated that Mr. Ajit Jain, Director of the appellant company had asked before the AO for cross examination opportunity before framing any opinion against Mr. Ajit Jain & M/s Mangal Royal Jewels Pvt Ltd.*

*8.3.4 The appellant has consistently taken the stand that there was no discrepancy found between physical stock and stock in the books of accounts while stocks were physically verified by the search teamHence, only conclusion that can be drawn was that physical sale of gold during the year & sale recorded in the books of accounts are not in divergence. The impugned sales were recorded in the books of accounts & VAT was also paid on the same as shown in the VAT return as well as statutory audit & tax audit report along with quantitative details of stocks. According to the appellant, the books of accounts are properly maintained by the company as per prescribed method under section 145 of the I.T. Act.*

*8.4 I have carefully considered the findings of the AO while making impugned addition as unexplained cash credit appearing in the books of accounts of the Appellant as sale of gold and bullion to M/s Dyaneshwari Multi State Urban Co-Op Society Ltd. of Rs. 2,00,00,000/- in the light of above stated background and the verbal and written arguments of the appellant filed during the appellate proceedings.*

8.5 The AO has made the impugned addition of Rs. 2,00,00,000/- on the following premises-

8.5.1 The sale of gold bars of 6543.981 gm was made to M/s Dyaneshwari Multi State Urban Co-Op Society Limited., a Cooperative Society.

8.5.2 Shri Nilesh Ashok Kamble, Branch Manager of the Cooperative Society, in the statement recorded u/s 131 of the Act, stated that cash of Rs. 2 crore was deposited in the account of the Society and thereafter RTGS of equivalent amount was transferred to the appellant's bank account in four tranches on 17.11.2016. The Society has neither purchased any gold/bullion nor provided any loan to the appellant company.

8.5.3 During the search and survey proceedings, Shri Ajit Jain replied that he did not remember the said transaction and its delivery.

8.5.4 Although, the copy of PAN of the Society was attached with the sale bill of Rs. 2 Crore, but the photographs of the recipient was not available.

8.5.5 The distance between the Society and the appellant's premises was around 16 km. There is no reason for the Society to purchase gold and bullion when the same was available at the Jhaveri Bazar itself where the Society was located.

8.5.6 The bill book contains signature of an unknown person as recipient which could not be identified by Shri Ajit Jain.

In the light of above facts and circumstances related to the issue involved, the AO, in para 6.3.5 of the assessment order has concluded that the appellant has only received RTGS amounting to Rs. 2 crore and no gold bar was actually sold/delivered against the said receipt.

8.6 Against these observations, the appellant has argued before the undersigned that-

8.6.1 During the Search & Seizure action carried out at appellant's premises on 08.04.2017 by Investigation Wing, Mumbai, the search team had physically verified the entire stock. The stock available at the time of search was also valued by an independent Government appointed Registered Valuer. No discrepancy was found between the physical stock and the stock in the books of accounts. In the assessment order, I do not find any remark made by the AO with respect to any divergence between physical sale of gold during the impugned year & sales as recorded in the books of accounts

8.6.2 According to the appellant, the A.O. has not doubted the genuineness of the purchases made by the appellant. It is also contended that when the stock register has been accepted by the A.O. during the assessment proceedings doubting the sales cannot be justified on the basis of a third-party statement or other circumstantial evidences viz, no photograph of the recipient or unknown recipient etc.

8.6.3 It is further submitted during the appellate proceedings the Appellant had delivered the goods to the parties after receiving payments through RTGS. The appellant is making necessary entries in its regular books of accounts and in the stock register. During the search and the assessment proceedings, all evidences in support of its contentions are furnished in order to establish the genuineness of the transaction and nature and source of the receipts.

8.6.4 It is also submitted that the appellant is maintaining sales register and stock register on day-to-day basis containing requisite details for the whole year, which were produced by the appellant during assessment proceeding. The same is also produced during the current appellate proceedings too. It has been claimed that appellant is

*maintaining complete quantitative records relating to purchase, production and sales and sales are properly accounted for in the sales register and same was reduced from the stock register. On careful consideration, I find that the AO has not found any discrepancy with respect to these aspects highlighted by the appellant. No comment has been made with respect to veracity of the sales & purchase registers as well as stock register.*

*8.6.5 It has further been argued in the written submission that the appellant company is regularly filling statutory returns like VAT return, Income tax returns or be it Annual returns at ROC. It is also stated that the Company has always mentioned its TIN and PAN on the invoices and the same have been duly shown in the books of accounts. Against the transactions with M/s Dyaneshwari Multi State Urban Co-Op Society Limited. for purchase of gold bars from the appellant company, valid invoice & the gold bars were delivered to the buyer. Also, the company had paid VAT on this sale transaction. From the assessment order, I find that the AO has not adversely commented on these aspects as well.*

*8.6.6 As far the observation of the AO with respect to statement of Mr. Ajit Jain is concerned, the appellant has submitted that-*

*8.6.6.1 It is highly contentious of the A.O. to expect that a person will remember the name of all the parties with whom high value transactions have been executed - specially the case in hand, after nearly 5 months from the date of transaction (17.11.2016). Though the said transaction is one of the high value transactions, it can be that the name of the person be not remembered who has just visited once for a one-off transaction. Further, the appellant is engaged in retail trade and hence, came in contact with so many persons that it may be difficult to remember the name of each and every person with whom transactions have taken place.*

8.6.6.2 Moreover, it is difficult for any person to remember precisely things not so important, viz., name of delivery boy who has delivered goods to one-off customer, that too, under the daunting pressure of an on-going search action. Mr Ajit Jain, after some efforts, recollected the name of the delivery boy: Mr Shankar Kumavat, who would have made the delivery to the Society. However, he may not be very sure due to the passage of time of nearly 5 months from the date of transaction.

8.6.6.3 photograph. PAN card of a non-individual person viz., the Society does not bear a

8.6.6.4 The parties to a transaction are entitled to arrange their affairs in such a manner that are most convenient to them and the A.O. cannot sit in the armchair of a businessman and decide the manner in which the business should be conducted.

8.6.6.5 Apart from the above, it is also claimed that the impugned addition into imposition of double taxation on the same turnover/income in the same year. On one hand, the appellant has already offered such receipts in its ITR treating it as sale and on other side the AO has made addition u/s 68 of the Act.

8.7 Considering the above, in my considered view, the only relevant piece of evidence in the AO's observation, while making the impugned addition of Rs. 2 Crore, is the statement of Mr Nilesh Kamble, Branch Manager of M/s Dyaneshwari Multi State Urban Co-Op Society Limited. Other observation are peripheral to this statement of Mr. Nilesh Kamble. In the statement on oath, Mr Nilesh Kamble has stated that -

"as per the instructions of Mr Akhilesh Joshi, the overall head of Mumbai Branch of the society, the total cash of Rs 2 crores was deposited into the bank account of the society and

*thereafter an equivalent amount was transferred through RTGS to the assessee in four tranches"*

*It is further stated by Mr Nilesh Kamble that, as informed by Mr Akhilesh Joshi, cash of Rs 2 crores was to be delivered by a person related to Mr Patel Mama and as per the instructions of Mr Akhilesh Joshi the said amount was credited to the account of M/s Pratham Enterprises, one of the account holders of the Society, and also a member of the Society.*

*8.8 If the statement of Mr Nilesh Kamble is analysed carefully, it is apparent that Mr Nilesh Kamble was acting on the instructions of Mr Akhilesh Joshi. There is nothing on record which suggest that the statement of Mr Akhilesh Joshi, the overall head of Mumbai Branch of the society was ever recorded. The cash was deposited in the accounts of M/s Pratham Enterprises on various dates from 13.11.2016 to 16.11.2016. It was thereafter transferred to the account of th appellant company on 17.11.2016 through RTGS. These are recorded transaction in the bank accounts of M/s Pratham Enterprise & the appellant company. In t sales register and stock register, this amount is shown as sale of gold and bulli Sinst the name of M/s Dyaneshwari Multi State Urban Co-Op Society Limit. Neither the AO has doubted corresponding purchase of gold & bullion as recorded in the books of accounts nor any excess stock was found by the Search team. No adverse comment has been made by the AO with respect to the end result of the said RTGS amount of Rs. 2 Crores. There is nothing on record which suggest that the RTGS of Rs.2 crores was returned back by the appellant company to the Society or used for a purpose other than its business purpose. Logically, the Society will not leave such a huge amount in the bank account of the appellant company had the amount not utilised for purchase of gold or bullion.*

*8.9 If the statement of Mr Nilesh Kamble is taken on it's face value, where he has stated that no gold or bullion was purchased by the Society against the said cash, the next*

*logical inference is either the cash was returned back to the Society or equivalent amount of gold or bullion was sold in the name of some other entity. There is nothing on record, which suggest that cash was thereafter returned back to the Society. This situation will not arise normally since the AO has neither doubted the corresponding purchases of the gold & bullion as recorded in the books of accounts nor any excess stock was found by the Search team. Now the only remaining possibility is that the equivalent amount of gold or bullion was sold in the name of some third party resulting into some benefit to the company. As claimed by the appellant, this sale of Rs. 2 Crore is already recorded in the stock register and other books of accounts of the appellant company. At most, difference in the Net Profit (NP) on the entire sale vis-à-vis Net Profit (NP) on this sale of Rs. 2 Crore can be added as unaccounted profit as held in a no. of Judicial decisions. NP on the sale of gold & bullion for the AY 2017-18 is shown by the appellant Company at 1.35%. At this rate, the profit on the sale of gold and bullion worth Rs. 2 Crore worked out to Rs. 2,70,000/-. Even when it is considered that no profit was offered on the impugned transactions of Rs. 2 crores made through RTGS, only Rs. 2,70,000/- deserved to be added to the total income of the appellant on estimate basis. Hence, the addition of Rs.2,70,000/- is confirmed. The AO is directed to delete the balance addition of Rs. 1.973 Crore. Thus, the round of appeal no. 2 is partly allowed”*

14. On the second disputed issue, the Ld. DR submitted that the CIT(A) has erred in allowing the relief to the extent of Rs.77.93 lakhs as against of Rs.79 lakhs being added by the A.O. though the assessee has not submitted any documentary evidence of actual delivery of gold The CIT(A) has dealt on the written submissions of the assessee at Para page 17 Para 9 of the order as under:

"9. The ground of appeal no. 3 relates to addition of Rs. 79,00,000 u/s 68 of the Act on account of unexplained cash credit appearing in the books of accounts of the Appellant as Sale to four concerns.

APPELLANT SUBMISSION

9.1 During the course of the appellate proceedings, the appellant has filed written submission as under:

4. Re-Ground of appeal no 3 - Addition under section 68-Rs. 79,00,000 The Assessing Officer made an addition of Rs. 79,00,000 under section 68 of 4.1. the Act, alleging the amount received on sale of bullion to below mentioned entities, said to be controlled by Mr Ashit Doshi, as unaccounted money-

<i>Sr no Name of the entity</i>	<i>Amount</i>
1. Aman Trading	17,99,500
2. Aman Enterprises	17,99,500
3 Marina Trading	21,50,000
4 Pradip Trading	21,50,500

4.2. The Assessing Officer made the impugned addition for the reasons that 4.2.1. In the statement on oath of Mr Ashit Doshi of 01.12.2016, he has stated that the sale bill of the appellants to the aforesaid entities is bogus, and against which no delivery of goods is received. He further, stated that he was contacted by a broker Mr Mahesh Mangal to deposit in the bank accounts of his aforesaid proprietorship/ partnership firms, old currency notes of denomination Rs 500 and Rs 1000 which have ceased to be legal tender effective from 09.11.2016;

4.22. He further stated in his statement that he received Rs 84,00,000 in cash and after deducting his charges of Rs

5,00,000, made RTGS from the aforesaid accounts aggregating Rs. 79,00,000.

4.2.3. Receiver signature on the sale bills are different from each other, though allegedly controlled by the same person Mr Ashit Doshi;

4.3. the appellants contend that the impugned transaction of sale of bullion to the parties mentioned in Sr no 4.1 above is supported by documentary evidences being photo copy of sale invoice of each buyer and bank statement evidencing receipt of sale consideration. All these documents are filed before the Assessing Officer - refer letter dated 21.11.2019 of the appellants filed with the Assessing Officer page nos 51 to 106 of the paper book. 4.4. The appellants contend that the reasons given by the Assessing Officer in point no 4.2 above are legally not tenable inasmuch as

4.4.1. There is gross violation of the principles of natural justice as the said statement of Mr Ashit Doshi was recorded behind the back of the appellants and the Assessing Officer ought to have provided a copy of the same to the appellants, for rebuttal, before using the same against the appellants. The Assessing Officer was duty-bound to give an opportunity of cross-examination to the appellants. It would not be out of place to mention that cross-examination is not given in spite of a specific request being made by the appellants to the Assessing Officer - refer letter dated 21.11.2019 of the appellants filed with the Assessing Officer page nos 51 to 106 of the paper book. Accordingly, such statement on oath cannot be relied upon and ought to be ignored.

4.4.2. The Assessing Officer has not appreciated the facts of the case in its right perspective. The appellants submit that Mr Ajit Jain, Director of the appellant company, on being shown the statement on oath of Mr Ashit B Doshi dated 01.12.2016 (relevant question nos 31 to 34), categorically stated that he is in disagreement with his statement and reconfirmed that the

*sale bills issued by the appellants are genuine and that actual delivery of goods has taken place to the aforesaid buyers. Later, during the course of hearing, in his statement on oath recorded on 13.12.2019 at Question no 15 explained to the Assessing Officer that Mr Ashit Doshi had visited their showroom for purchase of bullion; however, at that point of time no stock was available and hence, at his request, Mr Ashit Doshi transferred amounts through RTGS for purchase of bullion refer para no 7.5 of the assessment order. On receipt of RTGS, the required quantity of bullion was purchased (3by the appellants and then delivered to Mr Ashit Doshi at Sion by Mr Shanti Lal Sharma (Pintu) sales man of the appellants - refer Question no 17 of statement on oath of Mr Ajit Jain recorded on 09.04.2017 refer page nos 107 to 153 of the paper book.*

*4.4.3The Assessing Officer without appreciating the said facts states in para 7.6. of the assessment order that "A perusal of the Bill Book shows that there are some signatures made as "Receivers Signatures 9. It is interesting to note that all the four signatures on the Bill numbers 4174, 4175, 4176 and 7177 are different from each other. None of the signature match with any of the other signature thereby indicating that all the four signatures are of different people. If what Shri Aait Jain has stated is true all the four signatures should be of Shri Ashit Doshi" (emphasis ours).*

*Thus, from the above it can be inferred that the event of purchase of goods and actual delivery are at two different points of time and that the delivery of goods taken at Sion may be by different persons working for different proprietor/partnership concerns, under the authority of Mr Ashit Doshi. The Assessing Officer thus, misinterpreted the relevant facts and made the impugned addition.*

*4.4.4. The appellants further contend that there being contrast views expressed by Mr Ajit Jain and Mr Ashit Doshi, the Assessing Officer has conveniently accepted the version of Mr*

*Ashit Doshi ignoring the evidentiary value of the statement on oath of Mr Ajit Jain, which in law is not correct.*

*In view of the above, the appellants contend that the impugned addition ought to be deleted.”*

15. The CIT(A) after considering the facts, submissions and information has granted the partial relief and dealt at Para 9.2 & 9.3 of the order as under:

*“9.2 On careful verification, it is observed that nature of addition as highlighted in ground of appeal no. 3 i.e., addition of Rs. 79,00,000 u/s 68 of the Act on account of unexplained cash credit appearing in the books of accounts of the appellant as Sales to M/s Aman Trading, M/s Aman Enterprises, M/s Marina Trading, M/s Pradip Trading is identical to ground of appeal no. i.e., addition of Rs. 2,00,00,000 u/s 68 of the Act on account of unexplained cash credit appearing in the books of accounts of the appellant as Sale to M/s Dyaneshwari Multi State Urban Co-Op Society Limited. With respect to addition of Rs. 2 Crore related to sales to M/s Dyaneshwari Multi State Urban Co-Op Society Limited., the AO had relied upon the statement of Mr Nilesh Kamble, statement of Mr Ashit Doshi has been used while making impugned addition of Rs. 79,00,000/- related to sales to the four concerns as stated above. The statement of Mr. Ajit Jain has again been quoted by the AO. In both the situations, Mr Nilesh Kamble and Mr Ashit Doshi have denied having received the gold and bullion against the amount transferred through RTGS in the accounts of the appellant. The AO has doubted the veracity of the recipients of the gold and bullion in both the cases.*

*9.3 I find that the appellant has also made identical submissions as that made for ground no. 2, as reproduced above. Circumstances and findings of the AO remain the same. Hence, the undersigned findings for ground no. 2 would mutatis mutandis apply to this ground of appeal no. 3 as well. Hence, it is held that difference in the NP on the entire sale vis-à-vis NP on this sale of Rs.79,00,000/-*

*can at best be added to fill up the suppression of profit if any in this transaction, on estimate basis. As stated above, NP on the sale of gold & bullion for the AY 2017-18 is shown by the appellant Company at 1.35%. At this rate, the profit on the sale of gold and bullion worth Rs. 79 lakh worked out to Rs. 1,06,650/-. Even when it is considered that no profit was offered on the impugned transactions of Rs. 79,00,000/- made through RTGS, only Rs. 1,06,650/- deserved to be added to the total income of the appellant on estimate basis. Hence, the addition of Rs. 1,06,650/- is confirmed. The AO is directed to delete the balance addition of Rs. 77,93,350/-. Thus, the ground of appeal no. 3 is partly allowed”*

16. On the third disputed issue, the Ld. DR submitted that the CIT(A) has erred in deleting the addition of Rs, 5 Lakhs made by the AO on account of unexplained expenditure U/sec69C of the Act on accommodating entries obtained from third parties. The Ld. DR contentions are that the AO has considered the nature of the accommodation entry and also incurring of expenditure in obtaining the benefit to the assessee. Whereas the CIT(A) relied on the written submissions dealt in the appellate order at Para 10.1 of the order as under:

“ 10.1 During the course of the appellate proceedings the AR of the appellant had submitted under:

5. Re-ground of appeal No.4, addition under section 69C-Rs. 5,00,000/-

5.1. The Assessing Officer has made an addition of Rs. 5,00,000 under section 69C, being alleged commission paid in

cash to Mr Ashit Doshi for obtaining the alleged amount of Rs 79 lacs through bank without any corresponding sale of bullion.

5.2, The appellants contend that the Assessing Officer erred in making the impugned addition inasmuch as there is no evidence brought on record to substantiate that the appellants have paid cash of Rs to Mr Ashit Doshi. It is pertinent to note that during the course of search action on the appellants the Investigation team has not found any material or document that would indicate that the sales are not genuine or that sales are without any corresponding delivery of goods.

5.3. In any view of the matter, the impugned addition is consequential to the ground of appeal no 3 above.

In view of the above, the appellants contend that the impugned addition under section 69C ought to be deleted.”

17. The CIT(A) after considering the facts, submissions and has deleted the addition U/sec69C of the Act at Para 10.2 of the order as under:

“10.2 I have carefully considered the findings of the AO as mentioned in para 7.8 of the assessment order in the light of the submission of the appellant. The impugned addition of commission payment of Rs. 5 lakh to Mr. Ashit Doshi is based on the statement of Mr. Ashit Doshi. The AO has drawn an indirect inference that since Rs. 84 lakh is received by Mr. Ashit Doshi from Shri Mahesh Mangal (also known as Mr. Meghraj Jain) brother of Mr. Ajit Jain and RTGS of only Rs. 79 Lakh was made in the name of the appellant company, the balance amount of Rs. 5 lakh constitute unaccounted expenditure in the hands of the appellant company. This inference has no basis as the same is neither borne by any statement on record not any documentary evidence exists for the same. Hence, devoid of any merit, the addition of Rs. 5

*lakh deserved to be deleted. The AO is directed accordingly. This ground of appeal no. 4 is allowed.*

18. On the fourth disputed issue, the Ld. DR submitted that the CIT(A) has erred in deleting the RTGS credits of Rs 3,27 crores in the bank accounts maintained by the assessee during the demonization period irrespective of the facts that the assessee could not substantiate with complete details. Whereas the CIT(A) has considered the findings of the Assessing Officer and written submissions of the assessee dealt at Para 11.1 of the order as under:

*“11.1 During the course of the appellate proceedings, through written submission, the appellant has submitted as under:*

*7. Re-Ground of appeal no 6-Addition under section 68-Rs. 3,27,77,981*

*7.1.The Assessing Officer has made an addition of Rs 3,27,77,981 under section 68 of the Act, being the amount received through banking channels against sales made, alleging such sales made as fictitious, details of which are given below.*

*7.2 at the outset, regarding parties mentioned in Table B in para 7.1. above, appellants contend that -*

*7.2.1. the Assessing Officer has not given any specific reason or adverse remark to allege the sales made to such parties as fictitious and the amount received from such parties as unaccounted money of the appellants.*

7.2.2 during the course of assessment, the appellants filed documentary evidences, being sales invoice, ledger account of such parties and bank statements to prove the genuineness of the transactions - refer letter dated 21.11.2019 of the appellants filed with the Assessing Officer page nos 51 to 106 of the paper book. The Assessing Officer has not disproved the documentary evidences filed by the appellants.

In view of the above, the appellants contend that the impugned addition made under section 68 of the Act ought to be deleted.

7.3. Regarding parties mentioned in Table A in para 7.1. above, the appellants contend that

7.3.1. The sales made to abovementioned parties are supported by documentary evidence like photo copy of sales bill, PAN card and bank statements filed with the Assessing Officer - refer letter dated 21.11.2019 of the appellants filed with the Assessing Officer page nos 51 to 106 of the paper book.

7.3.2. It is pertinent to mention that the Assessing Officer has not disproved the documentary evidences filed with him; however, has made the addition for the reasons that are not tenable in law, which have been discussed by the appellants in succeeding paragraphs for each customer.

7.3.3. Further, for over-the-counter sales, the appellants are not required under the Act, to verify the credentials of the customers.

7.3.4. The specific enquiries made by the Assessing Officer regarding customers does not prove the impugned sale transactions to be fictitious and that the amounts received through banking channels is the unaccounted money of the appellants. Further, the enquiries regarding financial position of the customers are confidential and not generally available in the public domain moreso at the time when the sale is effected over-the-counter. The Assessing Officer has failed to connect

*the enquiries conducted with the transactions under consideration for the year under reference*

*7.3.5. Customer-wise rebuttal to the reasons given by the Assessing Officer are as under-*

*7.3.5.1 ACIL Cotton Industries Ltd - the basis of the Assessing Officer to consider the sales made to ACIL as non-genuine, on the grounds that the buyer has weak financials, is restrained from the securities market, is having its registered office at Ahmedabad and the poor price of the scrip on the Exchange, are absolutely irrelevant considerations. Further, the financials of the said entity referred to by the Assessing Officer are for the period prior to 31st March, 2015 and the year under reference is previous year ended 31" March, 2017, hence irrelevant. The fact that such company is listed itself proves the identity of the purchaser company and the Assessing Officer cannot expect the appellants to verify the credentials of an entity and then decide to sell goods to them when the fact is that the appellants are getting the sale consideration immediately before the delivery of goods.*

*7.3.5.2. Farm Pvt Ltd RCG Financials India Pvt Ltd and Girish Hotels Resorts and Health have P.A. No. and information regarding such entities is available on the portal of the Income-tax Department, hence, proves the identity. The appellants cannot be expected to verify whether such entities are regular in filing their return of income.*

*7.3.5.3. GFL Financials Ltd- the basis of the Assessing Officer to consider the sales made to GFL as non-genuine, on the grounds that the buyer has weak financials, their Directors have failed to appear before the SEBI adjudicating authority, is fined by the SEBI, are irrelevant considerations. Further, the financials of the said entity referred to by the Assessing Officer are for the period prior to 31" March, 2015 and the year under reference is previous year ended 31 March, 2017, hence, irrelevant. The fact that such company is listed itself proves the*

*identity of the purchaser company and the Assessing Officer cannot expect the appellants to verify the credentials of an entity and then decide to sell goods to them when the fact is that the appellants are getting the sale consideration immediately before the delivery of goods.*

*7.3.5.4. Heema Infocom Ltd and Al Commodities Pvt Ltd - the appellants have submitted P.A. No of the companies under reference and as such, the identity is proved. The appellants cannot be expected to verify the credentials of such entities when the buyer(s) has given the sale consideration over-the-counter in retail trade.*

*7.3.5.5. Mr Rupesh Doshi, proprietor of R.R. Steel - The appellants have submitted P.A. No of the customer and as such, the identity is proved. The appellants cannot be expected to verify the credentials of such entities when the buyer(s) has given the sale consideration over-the-counter in retail trade. The appellants submit that the customer might not have updated his address in the PAN data based and accordingly, the umons could not have been served.*

*7.3.5.6. Sunil Viiaay Khanna The appellants contend that reliance placed by the Assessing Officer on the statements on oath of Mr Sunil Khanna, Mr Lokesh Dhot and Mr Ramchandra Yadav is misplaced for the reason that the said statements on oath have to be ignored as there is gross violation of principles of natural justice as the said statements are recorded behind the back of the appellants, and failed to provide the appellants, for rebuttal, and also that an opportunity of cross-examination is not provided even though a specific request was made by the appellants to the Assessing Officer - refer letter dated 21.11.2019 of the appellants filed with the Assessing Officer page nos 51 to 106 of the paper book.*

*In view of the above, the appellants submit that impugned addition under section 68 of the Act ought to be deleted.”*

19. Whereas, the CIT(A) has considered the information and granted partial relief and sustained the addition to the extent of Rs.4,42,503/- and the observations are at Para 11.2 to 11.5 of the order as under:

*“11.2. I found from the conclusion of the AO in para 9.3 and 9.4 of the assessment order that he has formed his belief of non-genuineness of the sales made through RTGS of these 14 entities similar to the sales made through RTGS to M/s Dyaneshwari Multi State Urban Co-Op Society Limited. of Rs. 2 Crore. The additional pointers made while making the impugned disallowance are poor financials of the parties concerned. Other observations remain the same.*

*11.3 On the issue of poor financials of these 14 entities, the appellant has stated before the AO about certain constraints which are implied to be in place/ practice with any jewellery businessman while doing business transaction, especially when the business transaction is of retail segment & in Cash/RTGS mode (i.e. not on credit basis). These are*

*11.3.1 No verification of source of payment possible*

*11.3.2 No verification of credibility & financial conditions possible*

*11.3.3 verification of share price & performance over the stock exchange possible*

*11.3.4 No need of KYC of your Customer*

*11.3.5 No need-to-know address of the customer*

*11.3.6 No need to check whether the customer is tax compliant or not*

11.3.7 No need to know about legal background of customer

11.4 Apart from the above, the appellant, during appellate proceedings has stated about these entities in the following manner.

11.4.1 In the case of transaction with M/s ACIL Cotton Industries Ltd, we had a CASH/RTGS payment mode deal with this company. And in such deals, we as a business man have constraints which have already discussed in reply to show cause notice. It is not possible to verify all such details, as expected by the Ld. AO, in over the counter sale transaction which got settled in RTGS mode.

11.4.2 In the case of transaction with M/s R C F Finance Private Limited & M/s Girish Hotel and Health Resorts Private Limited, it was not possible to ascertain whether potential customer is regular in filling its income tax return or a non-filler of return. Further, it is not mandate in any law in force to get declaration whether the customer is regular in filing income tax return. We have got a valid PAN of the buyer & discharge our liability casted upon us u/s 272B.

11.4.3 In the case of transaction with M/s GFL Financial India Ltd, we hereby explain that whether the customer is having any litigation pending with any regulatory body or any court and whether he is regular in appearing for the matter in front of the judicial bodies, What does it matter in case of over the counter sale to know whether he is any non-compliant of law and any legal proceedings are going upon the potential customer.

11.4.4 In the case of transaction with M/s Heema Telecom Limited and Al Commodities & Financial Services, we have explained that we have received a valid copy of PAN from the concern person of those entity. But there was a typological error in creating ledger a/c in books of accounts. The invoice was in name of M/s Heema Infocom Ltd instead of M/s Heema

*Telecom Ltd. The name on the PAN of the customer was also M/s Heema Infocom Ltd. The PAN of M/s Heema Infocom Ltd is AADCH2621N as annexed in Annexure- No.VI (Page No. 39 to 41) of reply to show cause notice. Hence, the contention of Ld. AO was welcomed & rectification of facts was to be done. With regards to Al Commodities & Financial Services, It was pertinent to note that the name on PAN is appearing the same as appearing in the sale invoice. The PAN of Al Commodities & Financial Services is AAPPS6559P. It's a proprietorship concern.*

*11.4.5 In the case of transaction with M/s R R Steel, we have explained that we have received a valid copy of PAN from the concern person of those entity. The PAN card does not contain address of any person. And, in general practice, we do not collect address proof from the buyer while selling goods in Cash/RTGS mode. It's being conveyed by buyer only which we mention in the invoice. The address of M/s R R Steel would have got changed & the ITD database may not be updated. The PAN of the R R Steel is AABPD8629D.*

*11.4.6 In case of transactions with Mr. Sunil Vijay Khanna, we have explained that the statement of his driver & servant was recorded at the back of Mr. Ajit Jain. As the statement has not been recorded in the presence of the assessee, which could not be treated as conclusive evidence unless confronted. The driver and servant neither have confronted the same with us nor has he been cross examined in our presence. It could have been adverse situation or he could be compelled to accept something which was not the fact or to put himself out of the part of any legal proceeding in future he would have stated as instructed, may be. It will be as per natural law & justice if the Ld. AO offer the assessee an opportunity of cross examination & the statement should be confronted. Hence, Mr. Ajit Jain had asked for cross examination opportunity before framing any opinion against Mr. Ajit Jain & M/s Mangal Royal Jewels Pvt Ltd. Mere placing angeliance upon the statement of servant & driver and without offering any cross examination*

*by the AO to Mr. Ajit Jain & without confronting the statement upon which reliance is being place will not be truly justice in the eye of law. And it will be against the doctrine of "Audi alteram partem".*

*11.5 Apart from the above, the appellant has also made identical submissions as that made for ground no. 2. Circumstances and findings of the AO also remain the same except the issue of poor financial of the 14 entities which have been dealt in the preceding paragraphs. Hence, the undersigned observations and findings for ground no. 2 would mutatis mutandis apply to this ground of appeal no. 6 as well. Hence, it is held that difference in the NP on the entire sale vis-à-vis NP on this sale of Rs.3,27,77,981/- can at best be added to fill up the suppression of profit if any in this transaction, on estimate basis. As stated above, NP on the sale of gold & bullion for the AY 2017-18 is shown by the appellant Company at 1.35%. At this rate, the profit on the sale of gold and bullion worth Rs. 3,27,77,981/- worked out to Rs. 4,42,503/-. Even if it is considered that no profit was offered on the impugned transactions made through RTGS, only Rs. 4,42,503/- deserved to be added to the total income of the appellant on estimate basis. Thus, addition of Rs. 4,42,503/- is confirmed. The AO is directed to delete the balance addition of Rs. 3,23,35,478/-. Thus, the ground of appeal no. 6 is partly allowed".*

20. The last disputed issue, The Ld.DR submitted that the CIT(A) has erred in deleting the cash deposits of Rs.5.53 crores in the bank accounts by the assessee during the demonization period alleged as cash sales. Whereas the CIT(A) has considered the facts and the submissions of the assessee at Para 12.1 of the order as under:

*“12.1 During the course of the appellate proceedings, through written submission of the appellant has submitted as under:*

*6. Re-Ground of appeal no 5 - Addition under section 68-Rs 5,55,30,000*

*6.1. The Assessing Officer made an addition of Rs 5,55,30,000 under section 68 of the Act alleging the cash sales made during the year under reference to be fictitious.*

*6.2. The Assessing Officer has made the impugned addition for the following reasons*

*6.2.1. Substantial quantity of gold/ jewellery is sold in cash just prior to demonetization, that is, in October and up to 08.112016;*

*6.2.2. Same persons have bought gold from companies belonging to same group, mentioning different address. Further, the signature on such bills does not match with the signature as per the PAN card.*

*6.2.3. The appellants should have verified the credentials of the purchaser on the basis of the PAN card;*

*Contentions*

*6.3. The appellants contend that each cash sale made by the appellants is supported by documentary evidences like sale bill together with photo copy of PAN card of the buyer and as such, the identity of the buyer and the sale is proved.*

*6.4, Further, the cash received on sale of gold/ bullion is recorded in the books of account and subsequently, such cash is deposited in the bank account, thus, there is no reason to make the impugned addition under section 68 of the Act.*

6.5. The appellants contend that the reasons mentioned by the Assessing Officer are misplaced for the following -

6.5.1. It is a known fact that sales increase in festive seasons in India. As per the customs and traditions in India, gold and/or jewellery is usually bought on auspicious days or during festive season. Diwali is considered as the most auspicious festival and there is a tendency of high demand in gold/jewellery during pre and post-Diwali festival. Further, for the year under reference, Diwali festival commenced from 28th October, 2016 to 1st November, 2016, thus, there is high sales in the month of October, 2016 and November, 2016. The Assessing Officer in his zeal to make the impugned addition clearly ignored this vital fact that Diwali festival had just gone by when the demonetisation was announced by the Government of India. This explains the high sales in October, 2016 and till 08.11.2016.

6.5.2. The allegation of the Assessing Officer that the same customers have purchased gold or jewellery from different entities belonging to the same group (on facts, from the appellant-company and Shree Mangal Jewels Pvt Ltd) is sans any merit. The appellants submit that the customers may buy the jewellery of their taste, whether it is of the appellants or a group company of the appellants, Thus, the reason of the Assessing Officer for making the impugned addition is misplaced.

6.5.3. The Assessing Officer in para 8.5 on page no 30 states that in case of sales in excess of Rs 2,00,000, the appellants have taken PAN card and presumes that the availability of PAN card means that the appellants would have verified the credentials of the customers. This is legally not a correct presumption in view of the provisions of Rule 114B of Income-tax Rules, 1962 read with section 139A(5)(c) which only obliges the appellants to obtain the PAN card and nothing further.

*The appellants submit that the Assessing Officer cannot expect the appellants to verify the credentials of the customers and once PAN card is furnished, the provisions of Rule 114B of Income-tax Rules, 1962 read with section 139A(5)(c) are satisfied and the identity of such person is proved, there is no further obligation on the appellants. Thus, there is no provision under the Act that requires the appellants to verify the credentials of the customers.*

*In view of the above, the appellants submit that impugned addition under section 68 of the Act ought to be deleted”*

21. The CIT(A) has considered the business operations, evidences and provisions of the Act and has deleted the addition, observing at Para 12.2 to 12.5 of the order as under:

*“12.2 I have carefully considered the findings of the AO in the assessment order in the light of submissions made by the appellant and facts on record.*

*12.3 From the assessment order, it is observed that the AO has made the impugned addition on the following premises -*

*12.3.1 Substantial quantity of gold/ jewellery is sold in cash prior to demonetization, i.e., in October and up to 08.112016;*

*12.3.2 Most of the people who purchased gold above Rs. 2 Lakh in cash, are don-filers of income tax returns referred*

*12.3.3 Few persons have bought gold from concerns belonging to same group, mentioning different address. Further, the signatures on such bills do not match with the signatures as per the PAN cards;*

12.3.4 The appellants should have verified the credentials of the purchaser on the basis of the PAN card;

12.3.5 There were some delays in depositing the cash, in the bank account.

12.3.6 Multiple bill books have been utilised by the appellant.

12.4 It is observed that elaborate reply has been made by the appellant before the AO (extensively quoted in the assessment order too) as well as before the undersigned on this issue. My observations on the same are -

12.4.1 According to the appellant, during the relevant year, Diwali festival had commenced from 28th October, 2016 to 1st November, 2016, thus, there was high demand and sales in the month of October & November, 2016. The demonetisation was announced by the Government post-Diwali season. This explains the high cash sales in October, 2016 and till 08.11.2016.

In this regard, it is observed that demonetization was announced by the Govt. on 8th November, 2016. The cash sales shown by the appellant, pre & post demonetization were-

Month	Cash Sales (in Rs.)
October, 2016	1,43,25,194
November, 2016	4,22,27,302

These sales are shown in the cash book and regular books of accounts of the appellant. It is further explained before the AO that cash book of M/s MRJPL was provided to the search team, which reflected opening balance of Rs. 1,42,65,096/- on 01.11.2016 and closing balance of Rs. 5,60,23,349/- as on 09.11.2016 out of which Rs. 5,55,30,000 of Specified Bank Notes (SBNs) i.e., Rs. 500/- & Rs. 1000/- currency notes, were

*deposited in Bharat Co-operative Bank, Vile Parle (E) on various dates as per convenience. According to the appellant, the search team did not find any discrepancy between stock physically verified by the team and the stock in the books of accounts. It is also contended before the undersigned that if AO's findings have got any merit to the extent that the impugned sale were bogus, the stock verified by the search team would not have tallied with the stock in books of accounts. It is also argued that on the sales recorded in the books of accounts, VAT was paid and shown in VAT return as well as in statutory audit & tax audit report along with quantitative details of stocks. On seeing the assessment order, I find similar argument made before the AO, have been completely ignored. In my considered view, if the AO has not found any lacuna, discrepancies or manipulations in the cash book regularly maintained by the appellant, these cash sales cannot be discarded considering the fact that the business of the appellant is cash sales oriented. It is also not the case of the AO that these sales are not taken into account in determining the profit earned during the year under consideration.*

*12.4.2 The AO has also quoted some circumstantial pointers which are summarized in above mentioned para 12.3.2 to para 12.3.6. In this regard, the appellant has stated that each cash sale is supported by documentary evidences viz., sale bill together with photo copy of PAN card of the buyer and as such, the identity of the buyer and the sale are established. On the issue of PAN requirement & non-filers, it is submitted by the appellant that a careful reading of section 139A read with rule 114B, makes it clear that there is no requirement that the person making transaction of more than Rs. 2 Lakh is liable to file the Income Tax Return u/s 139 as mandatorily. In this regard, I agree with the appellant's argument that the PAN requirement has been made mandatory to identify the person who makes the transactions above Rs. 2 Lakh in cash. And based on that identity, the Department's System can trace and retrieve the Financial Identity & other details to keep*

*track on that person's financial transaction & related income tax compliances. Once there is no requirement in the Income Tax Act for checking the Tax return filing status of the buyer by the sellers, no adverse inference can be drawn against Comm the appellant on this count. Hence, the AO's observations in this regard, is unfounded.*

*12.4.3 On the observation of the AO that the same customers have purchased gold or jewellery from different entities belonging to the same group (on facts, from the appellant-company and Shree Mangal Jewels Pvt Ltd) is also without any basis. The appellant has submitted that the customers may buy the jewellery of their taste, whether it is of the appellants or a group company of the appellants.*

*12.4.4 Further there is no merit in the suspicion of the AO that there were some delays in depositing the cash, in the bank account. In para 8.6 of the assessment order, the AO has shown deposit of cash of Rs. 3.65 crores & Rs. 1.70 Crores on 10th & 12th Nov., 2016 respectively. After that Rs. 7 lakh, Rs. 8.30 lakh and Rs. 5 lakh were deposited on 19th & 28th Nov., & 15th Dec., 2016. When the AO him self observed that the next possible date for deposit of the cash after demonetization, was 10th Nov., 2016, depositing total cash of 5.30 crore on 10th & 12th Nov., can not be termed unusual. A very small amount of 20.30 lakh were deposited later on. If no discrepancy in the cash balance as per cash book was found as on 8th Nov., 2016, depositing the cash on subsequent dates cannot lead to any adversity.*

*12.4.5 The AO has also questioned the rational of multiple bill books been utilised by the appellant for effecting the cash sales. In this regard, I fail to understand, as to how the AO has come to the conclusion that using multiple bill books will make corresponding sales as unreliable. In my considered view, the AO has just tried to raise doubts without bringing out on record concrete evidences of introduction of cash without effecting corresponding sales.*

*12.5 Considering the discussion made in the preceding paragraphs, in my considered opinion, the addition of Rs. 5,55,30,000/- as Cash deposit u/s 68 of the Act cannot be sustained. Hence, the impugned addition is deleted. The AO is directed accordingly. The ground of appeal no. 5 is allowed”*

22. Further the CIT(A) has considered the facts and findings of the Assessing Officer on invoking parallel addition U/sec69A of the Act and relied on the submissions of the assessee and granted relief observing at Para13.1&13.2 of the order as under:

*“ 13.1 During the course of the appellate proceedings, the appellant has submitted Re-Ground of appeal no 7-Addition under section 69A of the Act as under:*

*9. 9.1. The Assessing Officer has in the alternative to the additions made under section 68, aggregating Rs 11,67,07,981 (for details, refer para nos 3 to 7 above) invoked the provisions of section 69A of the Act.*

*9.2. The appellants for ready reference reproduce the provisions of section 69A as under-*

*"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not; in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*  
*(emphasis ours)*

9.3. From a cursory glance of the provisions of section 69A, it is crystal clear that the provisions can be invoked only when the appellants are found to be the owner of any money, bullion, jewellery or valuable article or thing which is/are not recorded in the books of account. However, on the facts of the case, it is submitted that the sales are recorded in the regular books of account and hence, the provisions of (Section 69A are not applicable.

9.4. It would not be out of place to mention that there was a search action on the appellants on 07.04.2017, and during the course of search no evidence was found that appellants are owner of any unaccounted money/assets.

9.5. Further, the impugned addition can be made only if the alleged unaccounted money/ asset is not recorded in the books of account or if recorded, no explanation or satisfactory explanation is given. However, on the facts of the case, the appellants have explained that the aforesaid amounts in respect of which addition is made, is sales credited in the regular books of account during the year under reference.

In view of the above, the appellants submit that the aggregate addition of Rs. 11,67,07,981 cannot be made under section 69A of the Act.

13.2 I have carefully considered this alternative addition attempted by the AO in para 10 of the assessment order. As submitted by the appellant, sec. 69 of the Act can be resorted to when the appellant is found to be the owner of any money. bullion, jewellery or valuable article or thing which is/are not recorded in the books of account or if recorded, no explanation or satisfactory explanation is given. However, considering the facts of the case, since the sales are recorded in the regular books of accounts of the appellant and appellant has put forth detailed reply on this issue during assessment proceedings, Sec. 69 of the Act, will not have any applicability. Hence, the

*alternative addition u/s 69 is deleted. Thus, ground of appeal no. 7 is allowed”*

23. Further the CIT(A) has adjudicated the additional ground of appeal of the assessee challenging the rejection of books of accounts by the Assessing officer and non compliance of provisions of section 145(3) of the Act by the A,O. The CIT(A) considered the submission, provisions of the Act and judicial decisions and allowed the additional ground of appeal filed by the assessee observing at Para15 to 15.2 of the order as under:

*“15.1 During the course of the appellate proceedings, the AR of the appellant had submitted as under:*

*10. Re-Additional ground of appeal - Rejection of books of account under section 145(3)*

*10.1. The Assessing Officer has rejected the books of account of the appellants on the ground that sales shown by the appellants to various parties are fictitious and the amount received on such sale is unaccounted money of the appellants*

*Contentions*

*10.2. The rejection of books of account is on assumptions and presumption and that each addition made by the Assessing Officer is separately dealt with by the appellants in ground of appeal nos 2 to 6.*

*10.3. The appellants submit that the Assessing Officer has not brought anything on record to show that there is any doubt about the correctness or completeness of the accounts of the appellants. It is submitted that the Assessing Officer has not pointed out any defect in the books of account and merely on the basis of his presumption of unexplained credit entries*

*proceeded to reject the same which is not permissible under the law.*

*10.4. In fact, it is evident from the assessment order that the Assessing Officer has accepted the annual accounts prepared by the appellants inasmuch as the starting point of the computation of income prepared by him is the income per computation of income filed with the return of income which is based on the profit and loss account of the appellants. Further, while adjudicating other issues such as, addition under section 68 of the Act the Assessing Officer has relied on the figures as appearing in the books of account.*

*10.5. The appellants further, submit that unless any specific defects are pointed out in the books of account by the Assessing Officer, the same cannot be summarily rejected. In this regard, reliance is placed on the following decisions-*

- (a) CIT v. Symphony Comfort Systems Ltd. [216 Taxmann 225 (Guj)]*
- (b) CIT v. Ceramic Industries [396 ITR 509 (Raj)]*
- (c) PCIT v. Garden Silk Mills Ltd. [388 ITR 237 (Guj)]*
- (d) CIT v. Jacksons House [198 Taxman 385 (Del)]*
- (e) CIT v. Jananamandal Ltd. [214 Taxman 49 (All)]*
- (f) CIT v. Salochana Bhatia [208 Taxmann 224 (P&H)]*

*10.6. The appellants further, submit that merely because an addition is made in the assessment order, it does not mean that the books of account are not reliable. An addition to total income cannot be a ground to invoke section 145(3) and reject the books of account.*

*In view of the above, it is submitted that the action of the Assessing Officer in rejecting the books of account is not in the spirit of law.”*

*15.2 I have carefully considered the merit of this ground of appeal in the light of various observations of the AO and facts on record. In my considered view, various additions have been made based on doubts and circumstances rather than defects or deficiencies found in the books of accounts. Actually, not a single lacuna in the books of accounts has been highlighted by the AO. Hence, there is no basis to reject the books of accounts during assessment proceedings. Thus, the additional ground of appeal is allowed”*

24. Whereas the Ld.AR submitted that the assessee has substantiated the submissions on the all additions of the A.O, which are exclusively based on the cash sale deposits and RTGS credits in the bank account. The Ld.AR highlighted on the facts, evidences and supported the transactions with the summary of cash available during the F.Y 2016-17 and also emphasized that the assessee has maintained cash book and VAT returns were filed as per the provisions of the Act and referred to the voluminous submissions made in the appellate proceedings Further the Ld.AR has referred to the summary of cash available as per the financial statements. Further the Ld. AR submitted that the turnover of the assessee in F.Y.2016-17 was accepted by the authorities and also substantiated the submissions with the copies of the VAT returns and

invoices. Further in response to the show notice issued of the A,O, the assessee has filed the exhaustive details referred at page 51 to 106 of the paper book. The assessee has also substantiated the quantitative stock maintained and the transactions are totally supported with the material details placed in Tax Audit report U/sec44AB of the Act at page 26 to 35 of the paper book.

25. The Ld.AR emphasized that, the detailed explanations with the evidences filed in lieu of notice issued u/s 142(1) of the Act was filed and the AO has not considered these facts and made unilateral addition overlooking these material evidences..The Ld. AR submitted that that the assessee has filed the details of purchase of the jewellery by the customers during the demonetization period and also the details of quantity purchases, sales & stock in F.Y.2016-17 and also the VAT returns were filed. The assessee has also submitted the details of cash sales reflected in the books of accounts and the comparative statement of F.Y.2015-16 &F.Y.2016-17. Whereas, the Assessee has made cash deposits in the bank account aggregating to (Rs.23.73.crs) in the F.Y.

2016-17 and out of which (Rs.13.27.crs) pertaining to demonetization period. The assessee has obtained the PAN of customers and was filed on record or in other cases, where PAN is not available, the assessee has obtained Form No.60 and complied with the Income Tax provisions. The CIT(A) has considered all the material evidences filed from time to time, the tax audit report and quantitative tally of stocks. The Ld. AR further submitted that the demonetization period preceded by the Diwali sales on 30th October 2016 and there was increase in sale of jewellery. The assessee had filed the details of party wise sales in cash above Rs.2 Lakhs from 120 parties disclosing date of sale, PAN, Sale bill amount and all aggregated to Rs.3,86,06,598. Similarly, in the cases where the cash transaction of sale of gold jewellery is below Rs.2 lacs in respect of each customer, the cash sales are Rs.2,64,28,749/- and therefore considering the total cash availability of Rs,6,50,28,749/-, the cash deposits in the bank account are comparatively much less than the total cash sales. Further the proportionate of cash sales above Rs.2 Lakhs and less than Rs.2 lakhs is in the ratio of 59.37% and 40.63%

in the F.Y. 2016-17. The Ld. AR relied on the following judicial decisions.

1. *CIT Vs. Symphony Confort Systems Ltd [216 Taxmann 225 (Guj)].*
2. *CIT Vs. Ceramic Industries [396 ITR 509 RAJ]*
3. *PCIT Vs. Garden Silk Mills Ltd., [388 ITR 237 (Guj)]*
4. *CIT Vs. Jacksons House [198 Taxmann 385]*
5. *CIT Vs. Jananamadal Ltd [214 Taxmann 49]*
6. *CIT Vs. Salochana Bhatia [208 Taxmann 224 (P&H)]*

26. We find the Honble Tribunal in the case of Anantpur Kalpana Vs. ITO, [2022] 138 taxmann.com 141 (Bangalore Trib), dated 13-12-2021 has dealt on the transaction of cash sales during the demonization period and has observed at Para 6 of the order read as under:

*6. I have heard the rival submissions. Learned Counsel for the assessee submitted that both the AO and CIT(A) accepted the fact. that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. He submitted that the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It*

*was also submitted that the assessee was having only one source of income from beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. It was also submitted that the government permitted all to deposit old demonetized notes upto 31-12-2016. Since the amounts deposited were sale proceeds of business and the income from the business have already been taxed, the impugned addition should be deleted. Our attention was also drawn to section 26(2) of the RBI Act, 1934 which provides that government can specify certain notes as not legal tender. It was argued that if there is any violation of the statutory provisions, the consequences will be only under the relevant provisions of RBI Act, 1934 and those violations cannot lead to any addition under section 68 of the Act. The learned Counsel also placed reliance on the following judicial pronouncements rendered on identical facts of the case as that of the assessee. Hon'ble Kolkata Tribunal in the case of CIT v. Associated Transport (P) Ltd. [1996] 84 Taxman 146/[1995] 212 ITR 417 wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, therefore, held that there was no reason to treat this amount as income from undisclosed sources and it was not a fit case for treating the said amount as concealed income of the assessee. The revenue moved to Hon'ble Calcutta High Court against the order of the Hon'ble Tribunal and the Hon'ble High Court has confirmed the order of the Tribunal while deleting the penalty; the Hon'ble High Court of Calcutta held as under:*

*"8. The Tribunal was of the view that the assessee had sufficient cash in hand. In the books of account of the assessee, cash balance was usually more than Rs.*

81,000/-. There is no reason to treat this amount as income from undisclosed sources. It is not a fit case for treating the amount of Rs. 81,000/- as concealed income of the assessee and consequently imposition of penalty was also not justified in this case."

Further reliance is placed on the decision of the Hon'ble Vishakapatnam Tribunal in the case of Asstt. CIT v. Hirapanna Jewellers [2021] 128 taxmann.com 291/189 ITD 608 wherein, the Hon'ble Tribunal while considering the issue of implication of sec. 68 of the Act during demonetization held as under :

"9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

10. The assessee filed cross objections supporting the order of the Id. CIT(A). Since, the appeal of the revenue is dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed.

11. In the result, appeal of the revenue as well as the cross objection of the assessee are dismissed." 8. Learned DR reiterated the stand of the Revenue as reflected in the order of the CIT(A).

9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of Associated Transport (P) Ltd. (supra) on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of Hirapanna Jewellers (supra) on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already

*admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted.*

*10. In the result, appeal of the assessee is allowed,*

27. Similarly the Hon'ble High Court of Delhi in the case of Pr.CIT Vs. Agson Global P Ltd., 134 taxmann.com 256 (Delhi) 19 January 2022 has observed as under:

*Section 68, read with section 69C, of the Income-tax Act, 1961 - Cash credits (Share capital money) years 2012-13 to 2017-18 - - Assessment Assessee-company received share capital and share premium money from several investors - Assessing Officer made addition in respect of same on account of unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company Whether since placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuiness of investors was proved, there was no justification to make addition under section 68 Held, yes [Paras 11.4, 11.5 and 14.4] [In favour of - assessee]*

*II. Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus sales/purchases) - Assessment years 2012-13 to 2014-15 Assessee-company was engaged in business of selling dry fruits - Assessing Officer on basis of statement of director of assessee-company which was*

*recorded during search held that assessee booked bogus purchases in its books of account to inflate expenses and to reduce its taxable profits, and made an addition at rate of 25 per cent of such purchases - It was noted that said additions were made without conducting any enquiry - Furthermore, entire purchase and sale transactions were duly recorded in regular books of account of all parties concerned and were channels - routed through regular banking Also, in original assessments, all these details were verified and assessments were framed under section 143(3) Whether, in view of above facts, since no - incriminating evidences were found, impugned addition was to be deleted - Held, yes [Para 15.1] [In favour of assessee]*

*III. Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment years 2015-16 to 2017-18 - Assessee-company was engaged in business of selling dry fruits Assessing Officer made addition on - account of bogus purchases at rate of 25 per cent of purchases made by assessee from certain parties but sales made to these parties were completely ignored It was - found that purchases and sales with alleged bogus parties were supported by bills and vouchers as well as stock register was maintained in Tally accounting software by - Also, payment of purchase consideration and receipt of sale consideration from these parties were made through account payee cheque Whether thus, if - purchases were to be removed then corresponding sales were also required to be removed from regular books of account, which would lead to assessee's income falling below income declared/returned by it - Held, yes - Whether thus, impugned addition made on account of bogus purchases was to be deleted Held, yes [Paras 15.9] [In - favour of assessee]*

*IV. Section 68 of the Income-tax Act, 1961 - Cash credit (Bank deposits) - Assessment year 2017-18 - Assessee-company was engaged in business of selling dry fruits Post-demonetization, assessee deposited cash amounting to Rs. 180.53 crore in its bank accounts - Assessing Officer held that cash deposits made by assessee represented unaccounted income and accordingly, made additions Tribunal analysed data pertaining to cash sales and cash deposits made in relevant assessment year as against two earlier assessment years and noted that in year of demonetization percentage increase in sales was less than earlier year - He, thus, held that growth in sales compared to earlier two years showed similar trend, and it could not be said that assessee had booked non-existing sales in its books post-demonetization - Furthermore, revenue made no allegation that assessee had backdated its entries Whether since assessee placed material on record that cash deposits made with banks more or less corresponded with cash sales, it could only be concluded that there was growth in assessee's business and impugned addition was to be deleted - Held, yes [Paras 16.9 and 17.6] [In favour of assessee]*

28. We find the coordinate bench of Hon'ble Tribunal on the similar/identical issue in the case of M/s RS Diamond India Vs. ACIT, [2022] 145 taxmann.com 545 (Mum Trib) dated 26 July 2022 has observed and granted the relief at Para 4 of the order read as under:

*4. I have heard the parties and perused the record. The facts that the deposit made into the bank account is from out of the books of accounts and the said deposits have*

*been duly recorded in the books of account are not disputed. It is the submission of the assessee that it had received advance money from walk in customers for sale of jewellery over the counter and the amount so received was duly recorded in the books of account. The said amount alongwith other cash balance available with the assessee was deposited into the bank account after announcement of demonetization by the Government of India. He also submitted that the assessee has raised sale bills against the said advances in the name of respective customers. Since the transaction was less than Rs. 2.00 lakhs, it was stated that the assessee did not collect complete details of the customers. Thus, it is seen that the advance amount collected from customers, the sales bill raised against them etc., have been duly recorded in the books of account. The impugned deposits have been made from cash balance available with books of account. I also notice that the Assessing Officer has not rejected the books of account. When cash deposits have been made from the cash balance available in the books of account, in my view, there is no question of treating the said deposits as unexplained cash deposit as opined by the Assessing Officer.*

*5. The Ld A.R relied on certain case laws which are relevant to the issue under consideration. In the case of Lakshmi Rice Mills v. CIT [1974] 97 ITR 258 (Patna), it has been held that, when books of account of the assessee were accepted by the revenue as genuine and cash balance shown therein was sufficient to cover high denomination notes held by the assessee, then the assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time. In the case of Asstt. CIT v. Hirapanna Jewellers [2021] 128 taxmann.com 291/189 ITD 608*

*(Visakhapatnam Trib.), it was held that when the cash receipts represented the sales which has been duly offered for taxation, there is no scope for making any addition under section 68 of the Act in respect of deposits made into the bank account.*

29. The CIT(A) has considered the details of sales, the stock register and the consistency of the turnover. The assessee has submitted the details of cash sales/receipts and party wise details of sales above and below Rs.2 lakhs was submitted. Further the Ld.AR demonstrated the sample Tax Invoice below Rs.2 lakhs in the demonetization period and the invoice contains, name and address etc and the Ld.AR referred to the details of deposits made out of the cash sales and the assessee has been consistently maintaining the stock of Rs.21.10 crs for the F.Y 2015-16 and for F.Y 2016-17 it was maintained at Rs.17.69crs as per the audited financial statements, further the cash sales are part of the stocks maintained by the assessee which is not disputed. Since the cash sales proceeds/receipts received from the customers are reflected in the Audited Profit & Loss account as income/ receipts and again if the cash deposits are added under section 68 of the Act,

it will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. The AO has not pointed out any specific adversity but made a generalize additions covering the demonization period, cash deposits and RTGS credits without considering the factual aspects and primary evidences. The A.O has failed to make further enquiries on the information filed and the assessee has discharged the initial burden placed by submitting the information and details. We find that the Assessing Officer has not disputed on the quantity of stocks maintained in the register, and stock valuation in the Audited financial statements and also the turnover reflected by way of cash sales and bank credits. The assessing officer has accepted the sales and corresponding nexus with the purchases and closing stock of goods. We find the CIT(A) has dealt on the facts, provisions of law, submissions and judicial decisions and has passed a conclusive and reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) on the disputed issues and uphold the same and dismiss the grounds of appeal of the revenue.

30. In the result, the appeal filed by the revenue is dismissed.

**31. ITA.No.3062/Mum/2022 (Assessee Appeal)**

The assessee has raised the following grounds of appeal:

*The Commissioner of Income-tax (Appeals) - 47, Mumbai (hereinafter referred to as the CIT(A)) erred in sustaining aggregate addition made by the Deputy Commissioner of Income-tax, Central Circle 1(1), Mumbai (hereinafter referred to as the Assessing Officer) of Rs 8,19,153 under section 68 of the Act, received through banking channel on sale of stock recorded in the regular books of account, details of which are given below-*

*(a) Rs 2,70,000, being 1.35 per cent of the sale consideration of Rs 2 crores received from Dyaneshwari Multi State Urban Co-Op Society; -*

*(b) Rs 1,06,650, being 1.35 per cent of the sale consideration of Rs 79 lacs received from entities controlled by Mr Ashit Doshi;*

*(c) Rs 4,42,503, being 1.35 per cent of the aggregate sale consideration of Rs 3,27,77,981 crores received from various customers.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the impugned addition inasmuch as the CIT(A) has not correctly appreciated the facts of the case in its entirety.*

*The appellants further, contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have sustained the impugned addition since the provisions of section 68 of the Act are not applicable inasmuch as the entire amount received on sale of stock is accounted for in the regular books of account and as such, there is no unexplained credit,*

*which is a pre-condition for invoking the provisions of section 68.*

32. The Ld.AR submitted that the CIT(A) has erred in estimation of profit on the sale value/ receipts without considering the factual facts and information that the transactions are through banking channel and out of the stocks maintained by the assessee supported with audited books of accounts and were disclosed in the profit&Loss account and was subject to taxation and Ld.AR prayed for allowing the appeal. Per Contra, the Ld.DR supported the order of the CIT(A) on these disputed issues.

33. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.AR that the CIT(A) has granted relief to the assessee on the alleged additions made by the A.O, but estimated the profit element on sales/receipts. We find the books of accounts are Audited and the asseessee has disclosed the sales under the heading revenue from operations in the Profit & Loss account, whereas the A,O has not accepted certain sales value transactions and rejected the books of accounts under Section 145(3) of the Act. Whereas the CIT(A) having deleted the additions considering the submissions, provisions and evidences produced in support of cash

sales deposits in the bank accounts, which are based on the invoices and stocks maintained and is not disputed. But the CIT(A) having granted the relief to the assessee on the sales which are already offered and credited to the Profit & Loss account and the profit embedded is part of sale value. Therefore again estimating the profit element @1.35% on the sale values is subjected to double taxation, which is not acceptable/permissible in law. We considering the facts, circumstances and material evidences substantiating the sale values are of the view that the estimation of income @1.35% on the sales value is not warranted. Accordingly, we direct the assessing officer to delete the addition of impugned estimation of income on percentage basis on sales values and allow the grounds of appeal filed by the assessee.

34. In the result, the appeal filed by the revenue is dismissed and the appeal filed by the assees is allowed.

Order pronounced in the open court on 28.11.2023.

Sd/-  
(B R BASKARAN)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 28.11.2023

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai