

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No.254/Hyd/2023		
Assessment Year: 2017-18		
Bollam Sampath Kumar Jewellers (P) Ltd Warangal PAN:AAFCEB4496H (Appellant)	Vs.	Asstt. C. I. T. Circle 3(2) Hyderabad (Respondent)
Assessee by:	Shri S.Rama Rao, Advocate	
Revenue by:	Smt.TH Vijaya Lakshmi CIT(DR)	
Date of hearing:	28/11/2023	
Date of pronouncement:	11/12/2023	

**ORDER**

**Per R.K. Panda, Vice-President**

This appeal filed by the assessee is directed against the order dated 27.04.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of jewellery. It filed its return of income on 8.11.2017 declaring total income of Rs.35,93,490/-. The case was selected for scrutiny for verifying the following:

*“High Revenue from operations (including other income) and no scrutiny in preceding 5 A.Ys.*

*Large value cash deposited during demonetization period”.*

3. During the course of assesment proceedings, the Assessing Officer noted that information was received that the assessee has deposited huge cash in bank accounts held by it during demonetization period. The Assessing Officer asked the assessee to submit books of account, P&L Account, Bank Account Statements, Tax Audit Report and details of turnover for last 3 years and details of cash deposits made during demonetization period. However, there was no compliance from the side of the assessee. Since the assessee has made cash deposit of Rs.14,88,01,620/- during the demonetization period, the Assessing Officer made addition of the same treating the same as unexplained money u/s 69A r.w.s. 115BBE of the Act.

4. During the course of assesment proceedings, the Assessing Officer, in order to verify the actual trading quantity and the sales of gold jewellery asked the assessee to submit the corresponding purchase and sale bills for the financial year. However, the assessee submitted the sale bills randomly. The Assessing Officer observed from the said bills and vouchers that they are not the corresponding bills(purchase/sales) to verify the correct gross profit of the assessee. He, therefore, proceeded to estimate the net profit. He noted that the trading account for the two periods i.e. 1.4.2016 to 8.11.2016 and 9.11.2016 to 31.03.2016 shows gross profit margin of 11.32% and 0.65% respectively. According to the Assessing Officer by any stretch of imagination, there cannot be such a wide variation in gross profit percentage for two durations. This according to the Assessing Officer is clearly an attempt by the assessee to conceal its income

by showing lesser G.P in his own case which is 16.41 times less than that shown for the period from 1.4.2016 to 8.11.2016 which is unbelievable. He therefore, adopted a gross profit percentage of 11.32% on the sales to arrive at the profit and made an addition of Rs.10,97,68,945/- to the total income of the assessee by invoking the provisions of section 68 of the I.T. Act. The Assessing Officer accordingly determined the total income of the assessee at Rs.26,21,64,060/-.

5. In appeal, the learned CIT (A) NFAC confirmed both the additions made by the Assessing Officer. So far as the addition of Rs.14,88,01,620/- is concerned, he rejected the argument of the assessee that it produced the books of account and daily summary of the cash according to which an amount of Rs.7,70,12,947/- was the opening balance and all the sales were reflected in the cash book on the ground that despite number of opportunities granted the assessee did not offer any explanation regarding the nature and source of the deposits. Similarly, he sustained the addition of Rs.10,97,68,945/- made by the Assessing Officer on account of difference in the gross profit on the ground that the assessee has not demonstrated with market price vis-à-vis the quantity sold during both the period i.e. during pre-demonetization period and post demonetization period to support its claim.

6. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

1. *The order of the learned Commissioner of Income-Tax (Appeals)/NFAC is erroneous both in law on facts and circumstances of the case.*
2. *The learned Commissioner of Income-Tax (Appeals)/NFAC erred in concluding the cases without*

*considering the submissions made by the appellant on 20.01.2021, 07.11.2022 & 03.04.2023 and without verifying the figures.*

*3. The learned Commissioner of Income-Tax (Appeals) NFAC erred in concluding the matter without remitting back and verification of all the evidence to the A.O. The learned CIT(Appeals) ought to have seen that the additional evidence was filed along with application under Rule 46A and the learned CIT(A) failed to get the evidence verified.*

*4. The learned Commissioner of Income-Tax (Appeals)/NFAC erred in upholding the addition of entire cash deposits made in the bank accounts during the demonetization period of Rs. 14,88,01,620/- as unexplained money u/s 69A and taxing the same u/s 115BBE of the Act. The learned CIT (Appeals) ought to have seen that every deposit is properly explained and no addition should have been upheld.*

*5. The learned commissioner of Income-Tax (Appeals) /NFAC erred in treating the cash deposits made in the bank accounts as unexplained money u/s 69A having accepted the entire sales as per the books of accounts maintained.*

*6. The learned commissioner of Income Tax (Appeals) /NFAC erred in applying provisions u/s 69A of the I.T Act. Even after the appellant disclosed the cash deposits in bank accounts and maintained proper books of account and provisions of section 69A cannot be applied to the cash credits entered in the books of account.*

*7. The learned Commissioner of Income-Tax (Appeals) /NFAC erred in upholding the addition made by the A.O of Rs.10,97,68,945/-difference arrived by estimating the gross profit at 11.32% over the sales during the period from 09.11.2016 to 31.03.2017 as unexplained credits u/s 68 of the Act and taxing the same u/s 115BBE of the Act.*

*8. The learned Commissioner of Income-Tax (Appeals) /NFAC erred in rejecting the books of accounts and in estimating the gross profit at 11.32% over the sales and further erred in treating the income from other sources.*

*9. The learned Commissioner of Income-Tax (Appeals) / NFAC ought to have treated the entire sales receipts including profit element were disclosed and entered in the books of account. the Commissioner of Income-Tax (Appeals) is holding that such excess gross profit as unexplained income assessable u/s 68 of the I.T Act.*

*10. Any other ground that may be urged at the time of hearing.”*

7. The learned Counsel for the assessee referring to six volumes of Paper Book filed before the Tribunal drew the attention of the Bench to various details filed before the Assessing Officer as well as the CIT (A) NFAC containing the audited accounts, statement of the bank accounts, cash book and ledger for the impugned A.Y and the various details asked by the Assessing Officer from time to time. He submitted that for the impugned A.Y, the total turnover of the assessee is at Rs.154,79,41,530/- out of which sale of pure gold is Rs.75,31,07,710/-. He submitted that the net profit arrived at Rs.33,52,463/- from sale of gold giving a G.P rate of 0.4% is normal in bullion trade. He submitted that the assessee has maintained proper books of account including the stock register duly supported by bills and vouchers and all purchases and sales are recorded in the books of account. The sales are not disputed by the Assessing Officer. Further, the books of accounts were audited as required under the Companies Act and also under the provisions of section 44AB of the I.T. Act. He submitted that the opening cash balance as on 8.11.2016 was Rs.70,70,12,947/- and the sales effected are recorded in the cash book and the assessee has made the deposit in the bank account out of the cash available at that time. Therefore, both the lower authorities are not justified in making the addition by applying the provisions of section 69A.

7.1. Referring to the provisions of section 69A of the Act, he submitted that when the money, which is recorded in the books, cannot be treated as income of the assessee u/s 69A of the Act. Referring to the order of the Assessing Officer wherein he has mentioned that the assessee did not mention the sources for

depositing the money into the bank account, he submitted that the assessee produced the cash book before the Assessing Officer containing the opening balance and the source for the receipt. The deposits made into bank account as on 10.11.2016 are from the opening balance and the sales effected as on 9.11.2016 and 10.11.2016 which were recorded in the cash book and thereafter deposited in the bank account. Therefore, the observation of the Assessing Officer that the sources are not explained in the cash book is not correct. He submitted that the learned CIT (A) NFAC could have called for a remand report from the Assessing Officer or he could have verified the books of account himself. However, the learned CIT (A) NFAC sustained the addition made by the Assessing Officer which is not correct.

7.3 So far as the addition of Rs.10,97,88,945/- on account of difference in G.P rate is concerned, he submitted that the assessee submitted the sales bills and purchase vouchers on test check basis since the bills and vouchers are huge in numbers. He submitted that the assessee is in possession of all the bills and vouchers for the entire year and since the Assessing Officer did not insist for production of all the bills and vouchers, the assessee had produced some sample bills and vouchers. However, the Assessing Officer without understanding the nature of business carried on by the assessee and the rate of G.P shown by other assessees doing similar business, made the addition which is not correct. He submitted that when the assessee has maintained proper books of account and all bills and vouchers are available, provisions of section 68 cannot be invoked for making G.P addition. Further, the assessee also maintained stock register and no defects were found in the books of account either by the Auditor or by the Assessing Officer.

8. The learned Counsel for the assessee further submitted the following details to justify its trading results:

Station Road, Warangal  
Trading Accounts for the period from 01.04.2016 to 08.11.2016

Trading Account (Gold Ornament)			
Particulars	Amount	Particulars	Amount
To <b>Opening Stock:</b>		By <b>Sales:</b>	
--- Gold Ornaments	25,82,50,835	--- Gold Ornaments	49,60,72,036
" <b>Purchases:</b>		(-) Discounts	1,45,05,537
--- Ornaments	4,83,43,421		48,15,66,499
--- Stock Conversion	18,84,40,362	" <b>Closing Stock</b>	
" Making Charges	62,54,929	--- Gold Ornaments	5,88,44,122
" Stock Transfer - Gold			
" Gross Profit C/d	3,91,21,074		
	54,04,10,621		54,04,10,621

Trading Account (Pure Gold )			
Particulars	Amount	Particulars	Amount
To <b>Opening Stock:</b>		BY <b>Sales:</b>	
--- Pure Gold	0	--- Pure Gold	3,00,93,376
" <b>Purchases:</b>		" Transfer to Gold Ornaments	18,84,40,362
--- Pure Gold	32,86,77,541	" <b>Closing Stock:</b>	
" Gross Profit c/d	1,88,654	--- Pure Gold	11,03,32,457
	32,88,66,195		32,88,66,195

Trading Account (Pure Silver )			
Particulars	Amount	Particulars	Amount
To <b>Opening Stock:</b>		BY <b>Sales:</b>	
--- Pure Silver	0	--- Pure Silver	0
" <b>Purchases:</b>		" <b>Closing Stock:</b>	
--- Pure Silver	30,30,150	--- Pure Silver	30,30,150
" Gross Profit c/d	0		30,30,150
	30,30,150		30,30,150

Trading Account ( Silver Ornaments)			
Particulars	Amount	Particulars	Amount
To <b>Opening Stock:</b>		BY <b>Sales:</b>	
--- Silver Articles	4,14,91,964	--- Silver Articles	75,13,840
" <b>Purchases:</b>		" <b>Closing Stock:</b>	
--- Silver Articles	10,21,971	--- Silver Articles	3,61,21,672
" Gross Profit c/d	11,21,577		4,36,35,512
	4,36,35,512		4,36,35,512

Trading Account ( Diamond Crt)			
Particulars	Amount	Particulars	Amount
To <b>Opening Stock:</b>		BY <b>Sales:</b>	
--- Diamond Crt	10,90,469	--- Diamond Crt	5,59,778
" <b>Purchases:</b>		" <b>Closing Stock:</b>	
--- Diamond Crt	33,03,006	--- Diamond Crt	37,75,334
" Gross Profit c/d	-58,363		43,35,112
	43,35,112		43,35,112

Consolidated Trading Account for the period from 01.04.2016 to 08.11.2016			
Particulars	Amount	Particulars	Amount
To <b>Opening Stock:</b>		By <b>Sales:</b>	
--- Gold & Silver	30,08,33,268	--- Gold & Silver	51,97,33,493
" <b>Purchases:</b>		" <b>Closing Stock</b>	
--- Gold & Silver	38,43,76,089	--- Gold & Silver	21,21,03,735
" Making Charges	62,54,929		
" Gross Profit C/d	4,03,72,942		
	73,18,37,228		73,18,37,228

Trading Accounts for the period from 01.04.2016 to 31.03.2017

Trading Account (Gold Ornament)

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		By <u>Sales:</u>	
— Gold Ornaments	25,82,50,835	— Gold Ornaments	76,87,20,685
" <u>Purchases:</u>		(-) Discounts	2,82,57,064
— Ornaments	6,12,55,716		74,04,63,621
— Stock Conversion	47,74,72,413	" <u>Closing Stock</u>	
" Making Charges	1,02,65,229	— Gold Ornaments	12,60,79,436
" Gross Profit C/d	5,92,98,864		
	86,65,43,057		86,65,43,057

Trading Account (Pure Gold )

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		BY <u>Sales:</u>	
— Pure Gold	0	— Pure Gold	79,39,73,597
" <u>Purchases:</u>		" Transfer to Gold Ornaments	47,74,72,413
— Pure Gold	1,42,72,96,504	" <u>Closing Stock:</u>	
" Gross Profit c/d	46,61,289	— Pure Gold	16,05,11,783
	1,43,19,57,793		1,43,19,57,793

Trading Account (Pure Silver )

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		BY <u>Sales:</u>	
— Pure Silver	0	— Pure Silver	0
" <u>Purchases:</u>		" <u>Closing Stock:</u>	
— Pure Silver	87,31,490	— Pure Silver	87,31,490
" Gross Profit c/d	0		
	87,31,490		87,31,490

Trading Account ( Silver Ornaments)

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		BY <u>Sales:</u>	
— Silver Articles	4,14,91,964	— Silver Articles	1,25,54,433
" <u>Purchases:</u>		" <u>Closing Stock:</u>	
— Silver Articles	37,69,366	— Silver Articles	3,41,83,320
" Gross Profit c/d	14,76,423		
	4,67,37,753		4,67,37,753

Trading Account ( Diamond Crt)

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		BY <u>Sales:</u>	
— Diamond Crt	10,90,469	— Diamond Crt	9,49,879
" <u>Purchases:</u>		" <u>Closing Stock:</u>	
— Diamond Crt	33,21,788	— Diamond Crt	35,61,121
" Gross Profit c/d	98,743		
	45,11,000		45,11,000

Consolidated Trading Account for the period from 01.04.2016 to 31.03.2017

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		By <u>Sales:</u>	
— Gold & Silver	30,08,33,268	— Gold & Silver	1,54,79,41,530
" <u>Purchases:</u>		" <u>Closing Stock</u>	
— Gold & Silver	1,50,43,74,864	— Gold & Silver	33,30,67,150
" Making Charges	1,02,65,229		
" Gross Profit C/d	6,55,35,319		
	1,88,10,08,680		1,88,10,08,680

## #8-7-159, Sunil Theatre, Station Road, Warangal

Trading Accounts for the period from 09.11.2016 to 31.03.2017

## Trading Account (Gold Ornament)

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		By <u>Sales:</u>	
--- Gold Ornaments	5,88,44,122	--- Gold Ornaments	27,26,48,649
	0	(-) Discounts	1,37,51,527
" <u>Purchases:</u>			25,88,97,122
--- Ornaments	1,29,12,295		
--- Stock Conversion	28,90,32,051	" <u>Closing Stock</u>	
" Making Charges	40,10,300	--- Gold Ornaments	12,60,79,436
" Gross Profit C/d	2,01,77,790		
	38,49,76,558		38,49,76,558

## Trading Account (Pure Gold)

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		BY <u>Sales:</u>	
--- Pure Gold	11,03,32,457	--- Pure Gold	76,38,80,221
" <u>Purchases:</u>		" Transfer to Gold Ornaments	28,90,32,051
--- Pure Gold	1,09,86,18,963	" <u>Closing Stock:</u>	
" Gross Profit c/d	44,72,635	--- Pure Gold	16,05,11,783
	1,21,34,24,055		1,21,34,24,055

## Trading Account (Pure Silver)

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		BY <u>Sales:</u>	
--- Pure Silver	30,30,150	--- Pure Silver	0
" <u>Purchases:</u>		" <u>Closing Stock:</u>	
--- Pure Silver	57,01,340	--- Pure Silver	87,31,490
" Gross Profit c/d	0		87,31,490
	87,31,490		87,31,490

## Trading Account ( Silver Ornaments)

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		BY <u>Sales:</u>	
--- Silver Articles	3,61,21,672	--- Silver Articles	50,40,593
" <u>Purchases:</u>		" <u>Closing Stock:</u>	
--- Silver Articles	27,47,395	--- Silver Articles	3,41,83,320
" Gross Profit c/d	3,54,846		3,92,23,913
	3,92,23,913		3,92,23,913

## Trading Account ( Diamond Crt)

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		BY <u>Sales:</u>	
--- Diamond Crt	37,75,334	--- Diamond Crt	3,90,101
" <u>Purchases:</u>		" <u>Closing Stock:</u>	
--- Diamond Crt	18,782	--- Diamond Crt	35,61,121
" Gross Profit c/d	1,57,106		39,51,222
	39,51,222		39,51,222

## Consolidated Trading Account for the period from 09.11.2016 to 31.03.2017

Particulars	Amount	Particulars	Amount
To <u>Opening Stock:</u>		By <u>Sales:</u>	
--- Gold & Silver	21,21,03,735	--- Gold & Silver	1,02,82,08,037
" <u>Purchases:</u>		" <u>Closing Stock</u>	
--- Gold & Silver	1,11,99,98,775	--- Gold & Silver	33,30,67,150
" Making Charges	40,10,300		
" Gross Profit C/d	2,51,62,377		
	1,36,12,75,187		1,36,12,75,187

9. He submitted that when the assessee can justify the book results and the rate of profit is almost the same for both the periods, the Assessing Officer could not have resorted to estimation of income and thereby making the addition of Rs.10,97,68,945/- and the learned CIT (A) NFAC was also not justified in sustaining the addition. He accordingly submitted that both the additions made by the Assessing Officer and sustained by the learned CIT (A) NFAC should be deleted.

10. The learned DR, on the other hand, strongly objected to the arguments advanced by the assessee and drew the attention of the Bench to Para 6.4 of page 11 and 12 of the order of the learned CIT (A) NFAC where he has observed as under:

6.4 It is observed from CPC 2.0 portal that Ld AO had issued following notices before assessing the case u/s 143(3) which are reproduced as under along with assessee's responses.

1. Notice u/s 143(2) was issued on 24.4.2018 which is general in nature, fixing the date for hearing on 8.11.2017 remained non-complied.
2. Notice u/s 142(1) dated 24.1.2019 calling for various details which includes vide Sl. No.20. to explain the source of cash deposited during demonetisation period, fixing the case for hearing on 6.2.2019 remained non-complied.
3. Notice u/s 142(1) dated 28.10.2019 calling for further details which includes, 1. Last 3 years Turn Over, 2. Month wise cash balance, 3. Daily cash balance from 1.11.2016 to 8.11.2016 and 4. Bank certificate for cash deposits during the period 1.11.2016 to 8.11.2016 fixing the case for hearing on 5.11.2019 which remained non-complied.
4. 4<sup>th</sup> notice u/s 142(1) was issued on 5.12.2019 giving final opportunity mentioning the followings-

*"Notices u/s 142(1) of the Income Tax Act, 1961 have been issued on multiple occasions but it is seen that the information sought for has not been furnished. In this regard, a final opportunity is given to you to furnish the information sought for vide notices u/s 142(1) dated 24.01.2019, 28.10.2019.*

*As per the database available with this office, an amount of Rs. 68,27,80,589/- has*

*been deposited in bank accounts held by you during the demonetization period. You are required to show cause why the same should not be treated as your income and added to the total income.*

*The information sought for should reach the undersigned by 09.12.2019 failing which the assessment will be completed as discussed above."*

1. In response to said notice the assessee filed few details of earlier notices with a covering letter dated 7.12.2019 and in para 9 submitted that ' we have already requested our bankers to issue the certificates as to the case deposits in the bank accounts during demonetisation period and are informed that they would require some

time in compiling the data. We submit that we shall furnish the same at the earliest.

We will furnish the balance information in five days' time. Kindly consider the above and oblige.'

1. 5<sup>th</sup> notice u/s 142(1) was issued on 15.12.2019 fixing the case for hearing on 17.12.2019 as there the assessee did not submit the balance details/ documents calling for some more details.

1. Finally, 6<sup>th</sup> notice u/s 142(1) was issued on 23.12.2019 giving final opportunity fixing the case for hearing on 24.12.2019 as the assessee did not submit the balance details/ documents and calling for some more details giving very short date of hearing as the case was getting barred by limitation on 31.12.2019 and Ld AO passed the assessment order on 30.12.2019 which has been reproduced in AOs observations of this order.

10.1 Thereafter, he drew the attention of the Bench to Para 6.5 to 6.7 wherein the learned CIT (A) NFAC has discussed the issue and sustained the addition of Rs. 14,88,01,620/- which is as under:

6.5 Thus from the details of notices so issued u/s 143(2) and 142(1) as listed above, there remains no doubt that the appellant was given sufficient time and number of chances to produce the details and for want of which the Ld AO was compelled to pass the order as per information available on record. The above facts proves that principle of natural justice was observed but the assessee did not avail the said opportunities to explain its case and also failed to demonstrate with supporting evidence in support of its arguments. The appellant has not made it clear what prevented him from producing the required details/documents at the time of assessment proceedings. Further, in form 35, Sl.12 in reply to question **'Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A'** the appellant has said 'No'. This means there is no new evidence submitted before me that requires verification by the AO. Thus, the request of the assessee to call for a remand report from AO to verify the documents and also books of accounts is not accepted and I hereby reject the same.

6.6 The Ld AO examined the bank account statements and noticed that the total cash deposits made by the assessee in multiple accounts during the demonetization amounted to Rs.14,88,01,620/-. The assessee has not submitted the sources of the cash deposits. Thus, the second condition to section 69A does not satisfy i.e. "Wherein 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."*

6.7 In the present case the assessee offered 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. Thus, in the absence of information on the sources of the cash deposits in the bank accounts, he treated the said amount as unexplained money and added to the income of the assessee u/s 69A and taxed u/s 115BBE as the said section was substituted by Taxation Laws (Second Amendment) Act, 2016, w.e.f 1-4-2017 and applicable in the present case. Thus, I do not find any infirmity in the action of the Ld AO and confirm the said addition. **The ground No. 3 to 5 are, thus dismissed.**

10.2. He accordingly submitted that the order of the learned CIT (A) NFAC sustaining the addition of Rs. 14,88,01,620/- is justified.

10.3. So far as the addition of Rs.10,97,68,945/- is concerned, the learned DR drew the attention of the Bench to Para 7.5 of the order of the learned CIT (A) NFAC which reads as under:

7.5 The appellant has taken the plea that there were huge variation in the rates during F.Y 2016-17 due to demonetisation and pleaded for not adopting the rate for the pre-demonetisation that with the post demonetisation period. It is pertinent to mention here that gold and silver is sold at the prevailing market price on day-to-day basis. Thus, even there is fluctuation in the market price a jewellers sale it in the price published by the respective Bullion Market Association of the state/place on that day. Now, if the jewellers have and excess stock of earlier period which he purchased at higher price prevailing on that day and subsequently the price of gold falls he might incur loss. But on the contrary when the gold is purchased at lower price and price goes up he makes higher percentage of profit. Therefore, unless the assessee demonstrates with each day price, stocks, sales on daily basis no one can find out such variation in G.P. Since the appellant has not demonstrate with such analysis, the low GP rate for the period from 9.11.2016 to 31.3.2017 cannot be accepted. Further, the submission of the appellate on this count is also not correct which can be observed from the price chart of both 24 carat and 22 carat gold given below to demonstrate the prevailing market rate during the relevant time of a region which may not apply for him but can always draw a corollary to the fact. The appellant could have submitted before the AO similar chart of its region as discussed above to demonstrate its argument for such variation in G.P for two periods, i.e from 1.4.2016 to 8.11.2016 and 9.11.2016 to 31.3.2017 which he did not do.

10.4. Similarly, the learned DR drew the attention of the Bench to 7.6 of the order of the learned CIT (A) which is as under:

7.6 From the above chart, it becomes crystal clear that there was no such wide variation in rates, as claimed by the appellant, for the second period i.e from 8.11.2016 to 31.3.2017 for which this huge difference in gross profit is attributable, i.e from 11.32% to just 0.65 % for the second period. The appellant has not demonstrated with market price vis-à-vis quantity sold during both the period, i.e pre-demonetisation and post demonetisation in support of its claim. In absence of which the average rate adopted by the Ld AO is considered correct procedure. Thus, in view of the discussion made above, in my considerate opinion the addition of Rs.10,97,68,945/- being the difference in G.P between pre-demonetisation and post demonetisation, i.e 1.4.2016 to 8.11.2016 and 9.11.2016 to 31.3.2017 is correct method applied by the Ld AO and I confirm the same. Regarding remanding back to the AO, it has been discussed while disposing the ground No. 3 to 5 why it is unwarranted and thus not repeated here again. **In the result the ground No.6 to 8 are dismissed.**

10.5 He accordingly submitted that the order of the learned CIT (A) NFAC being very exhaustive should be upheld and the grounds raised by the assessee should be dismissed.

11. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We find the assessee in the instant case is engaged in the business of jewellery business and filed its return of income declaring total income of Rs. 35,93,490/-. The AO made two additions i.e. Rs. Rs.14,88,01,620/- being unexplained cash deposits during demonetization period and 10,97,88,945/- being the difference in G.P rate during pre-demonetization period and post demonetization period. It is the submission of the learned Counsel for the assessee that the total turnover of the assessee during the impugned A.Y is Rs. 154,79,41,530/- out of which the turnover of pure gold is amounting to Rs.75,31,07,710/- and the balance amount is on account of sale of jewellery. It is also his submission

that the assessee has maintained proper books of account duly audited under the Companies Act and also under the provisions of section 44AB of the I.T. Act giving quantitative details of gold and the auditors have not pointed out any defects in the books of account. It is also his submission that the assessee had an opening cash balance of Rs.7,70,12,947/- as on 8.11.2016 and the entire sales are reflected in the books of account and the cash has been deposited out of the cash available in the books of account and therefore, provisions of section 69A are not attracted. Further each purchase and sale is supported by bills and vouchers and the assessee had produced the bills and vouchers on test check basis before the Assessing Officer. However, had the Assessing Officer insisted for production of all the bills and vouchers which are large in numbers, the assessee could have produced the same. Further, despite producing all the relevant details before the learned CIT (A) NFAC, he did not call for any remand report from the Assessing Officer nor restored the issue to the file of the Assessing Officer and sustained the addition which is not justified. Similarly, the addition on account of difference in GP rate during the pre-demonetization and post demonetization period is also incorrect since the profit derived during the pre-demonetization period and post demonetization period is same which is as per the trading account filed.

12. We find some force in the above arguments of the learned Counsel for the assessee. The business of the assessee consisted of sale of jewellery and sale of bullion. So far as the first addition is concerned i.e. addition of Rs. Rs.14,88,01,620/- being the cash deposited during the demonetization period, we find the assessee before the learned CIT(A)/NFAC had categorically mentioned that the assessee had produced the cash book

containing the opening cash balance and sales during the year. The opening cash balance as on 8.11.2016 at Rs.7,70,12,947/- was not at all considered. The details of sales effected by the assessee has not been disputed by the Assessing Officer. Therefore, when the deposits are out of the cash balance available in cash book, the addition made by the Assessing Officer u/s 69A and upheld by the learned CIT (A) is not understood. Further, despite producing all relevant details, the learned CIT (A) did not call for any remand report, nor set aside the issue to the file of the Assessing Officer. So far as the other addition is concerned i.e. addition of Rs.10,97,68,945/- on account of difference in the G.P rate during the pre-demonetization and post demonetization period, we find the learned CIT (A) NFAC had given a finding that the assessee has not demonstrated the market price vis-à-vis the quantity during the pre-demonetization period and post-demonetization period in support of its claim. According to the learned CIT (A) NFAC the assessee could have submitted before the Assessing Officer a chart giving the gold and silver sold at the prevailing market rate on day-today basis by obtaining the market price published by the respective Bullion Market Association placed on that day. However, the assessee before us has filed details of sale of gold ornaments prior to the demonetization period and post demonetization period according to which the rate of profit derived from gold ornaments and pure gold are almost same.

13. Under these circumstances and considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate its case by producing the books of

account along with all the bills and vouchers and explain the nature and source of deposits in the bank accounts during the demonetization period. Similarly, the assessee is also directed to produce cogent evidence before the Assessing Officer to substantiate that there is no wide variation in the G.P rate of sale of gold during the pre-demonetization and post demonetization periods by producing the relevant bills and vouchers for purchase and sale of gold. The Assessing Officer shall decide the issue de novo as per fact and law after giving due opportunity of being heard to the assessee without being influenced by our observations in Para 12 above. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 11<sup>th</sup> December, 2023.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 11<sup>th</sup> December, 2023.

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Bollam Sampath Kumar Jewellers (P) Ltd, House No.8-7-159 Sunil Theatre, Station Road, Warangal 506002, Telangana
2	ACIT Central Circle 3(1) Aayakar Bhavan, Hyderabad
3	Pr. CIT -Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*