

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH 'DB', JABALPUR**

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

Sh. Yogesh Kumar US, Judicial Member

ITA No. 37/JAB/2019: Asstt. Year: 2016-17

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| Gaurav Agrawal, 65, Teachers Colony, Baldeobagh, Jabalpur (MP) 482001 | Vs | The ACIT, Central, Jabalpur (MP) 482001 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. ALNPA 7578 D | | |

ITA No. 39/JAB/2019: Asstt. Year: 2016-17

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| The DCIT, Central, Jabalpur (MP) 482001 | Vs | Gaurav Agrawal, 65, Teachers Colony, Baldeobagh, Jabalpur (MP) 482001 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. ALNPA 7578 D | | |

Assessee by : Sh. Sapan Usrethe, Adv.

Revenue by : Sh. Garima Chaudhary, CIT-DR

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| Date of Hearing: 24.11.2023 | Date of Pronouncement: 01.12.2023 |
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ORDER

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

The present cross appeals have been filed by assessee as well as Revenue against the order of Id. CIT(A)-1, Jabalpur dated 08.03.2019.

2. The assessee has raised the following grounds of appeal in ITA No. 37/JAB/2019 are as under:-

1. *The learned Commissioner of Income Tax (Appeal) has erred in upholding that the order passed under section 153A of the Income Tax Act, 1961 is as per law without appreciating that the assessment completed by ACIT (Central) circle Jabalpur in consequence to the order dated 10.03.2016 passed by Principal CIT - I, Jabalpur under section 127 transferring case from Raipur to Jabalpur is bad in law as Principal CIT - I, Jabalpur was not competent to transfer the case of appellant from Raipur to Jabalpur vide section 127(2) of the IT Act and hence notice issued under section 153A by ACIT (Central) circle Jabalpur and consequential assessment = was illegal and it should have been quashed by learned CIT(A).*

2. *The learned Commissioner of Income Tax (Appeal) has failed to appreciate that the order passed by the Principal CIT-1, Jabalpur under section 127 of the Act is bad in law as no reason were recorded and no opportunity of being heard was given and no facts that Principal CIT of Raipur and Principal CIT Jabalpur were in agreement was recorded.*

3. *The learned Commissioner of Income Tax (Appeal) was not justified in confirming the addition of Rs.12,96,390 on account of unexplained cash without appreciating the fact that this amount was normal possession of the appellant, who disclosed substantial income in the return of income and cash available represented the sale proceeds earned from the sale of bullion on same day and previous day and is duly recorded in the books of account.*

4. *The learned Commissioner of Income Tax (Appeal) was not justified in confirming the addition of Rs. 4,00,000 on account of unexplained money without considering the fact that this amount was received from Shri Ashok Gangwani who entered the searched premises just before the search, same fact was accepted by Shri Ashok Gangwani and authorized officer returned that money.*

3. The Revenue has raised the following grounds of appeal in ITA No. 39/JAB/2019 are as under:-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 67,85,00,100/- made by the A.O. on account of unexplained cash credit from undisclosed sources.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of out of total addition of Rs. 2,58,68,950/-made by the A.O. on account of unexplained transactions.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 1,04,19,713/- out of total addition of Rs. 1,04,33,573/-made by the A.O. on account of undisclosed income.*

4. The brief facts of the case are that the assessee is an individual and is engaged in the business of trading of gold and silver bullion and ornaments under the name and style M/s GS Bullion.

5. A search and seizure operation u/s 132 of the Act was carried out at business and residential premises of the assessee on 17.11.2015. The return of income for AY 2016-17 was filed on 15.03.2017 declaring total income of Rs. 90,16,190/-. The AO made the addition of Rs. 67,85,00,100/- on account of cash deposit in bank account, Rs. 16,96,390/- on account of cash found during the course of search, Rs. 2,58,68,950/- on account of unaccounted money and Rs. 1,04,33,573/- on account of unexplained transaction in books of account.

6. Aggrieved, the assessee filed appeal before the CIT(A). The Id. CIT(A) deleted addition of Rs. 67,85,00,100/- made by the AO on account of unexplained cash credit, Rs. 2,58,60,033/- made on account of unexplained transactions/ unaccounted money and Rs. 104,19,713/- on account of undisclosed income/ unexplained transaction. The Id. CIT(A) has also confirmed an amount of Rs. Rs.12,96,390 on account of unexplained cash and Rs. 4,00,000 on account of unexplained money.

7. Aggrieved, with the order of the Id. CIT(A), the assessee as well as Revenue filed appeals before the ITAT.

8. Major facts having taken from the order of Id. CIT(A).

ITA No. 37/JAB/2019 (Assessee appeal)

Cash found- Rs.16,96,390/-:

9. A search was carried on at business premises of the appellant on 17.11.2015 at Jabalpur. During the search cash of Rs.16,96,390 was found and Panchnama was drawn to this effect. It was stated by the assessee in response to question number 22 of the statement under section 132(4) recorded on 17.11.2015, that out of the cash of Rs.16,96,390 an amount of Rs.4,00,000 belongs to Mr. Jitendra Gangwani. The statement of Shri Jitendra Gangwani was recorded on 17.11.2015. He admitted that this money pertains to him. After verification from Mr. Jitendra Gangwani, the authorized officer returned the amount of Rs.4,00,000 to the Mr. Jitendra Gangwani and seized the balance amount of Rs. 12,96,390.

10. The statement of the appellant was recorded on 17.11.2015, on date of search the assessee who explained that cash of Rs.12,96,390 was out of sale proceeds of gold and silver for last few days and out of business income. He could not produce any proof or accounts at the time of search as all transactions were recorded in computer and accountant was at Indore.

11. The appellant filed reply on 03.10.2017 and on 12.12.2017 and submitted that cash balance of Rs.16,96,390 was from trading of bullion and commission income from bullion trade for the assessment year 2016-17. This sum is covered under the income surrendered at Rs.75,00,000 as admitted by

the appellant. The assessing officer however did not accept the explanation and for the reason given at para 9.1 made addition of Rs. 16,96,390. The same as under:-

9.1. Unexplained Money:-

During the course of search proceedings, cash of Rs. 16,96,390/- was found at the business premise of the assessee located at 745, Agrawal market, Sarafa, Jabalpur, out of which Rs. 12,96,390/- was seized. Inventory of cash found and seized was duly prepared.

The assessee during the course of search was asked to produce source of acquiring of such cash of Rs. 16,96,390/-. The assessee in this response stated that the cash seized are belongs to his selling of Gold and Silver for last day and current day ie. date of search, however, he could not produce any documentary evidence in this regard. Accordingly, statement u/s 132(4) of the Income-tax Act, was recorded on oath on 17.11.2015, in which the assessee was again requested to produce books of account/bills/vouchers etc for examination in regard of such cash of Rs. 16,96,390/-.

During the course of assessment proceedings questionnaire u/s 142(1) of the Act, was issued on 31.07.2017 in which the assessee was requested to explain the source of cash of Rs. 16,96,390/- as found during the course of search.

However, the assessee offered no explanation in this regard. Also the assessee failed to furnish cash book for examination. No complete detail regarding selling made by the assessee as the assessee stated that the said cash is belongs to his two days sale, was produced.

Contention of the assessee that Rs. 4,00,000/ - out of Rs. 16,96,390/- belongs to Shri Ashosh Gangawani, is also not acceptable, as following;
(a) The assessee stated that Rs. 4,00,000/- was given by Shri Jitendra

Gangawani against purchase of gold; however, it is notable that no stock was available at the time of search, and as per assessee's contention, Shri Gangwani immediately before entering of search party into the premise, had given the such cash of Rs. 4,00,000/-;

(b) Shri Jitendra Gangwani, was also confronted, and asked to produce receipt in this regard, however, he failed to produce any kind of receipt on behalf of depositing of his cash of Rs.4,00,000/-; It is worthy to mention here that no receipt books/bills books were found or seized at the premise.

(c) Shri Jitendra Gangwani, was asked to produce gold received by him against Rs. 4,00,000/- however, he stated that delivery will be done by tomorrow;

(d) Shri Jitendra Gangwani, was asked to produce source of cash of Rs.4,00,000/- however he failed to produce any kind of documentary evidence in this regard and just stated that the cash of Rs. 4,00,000/- is his personal savings;

(e) There is no one who give such huge cash amount which is out of his personal savings; for gold, delivery against which is to be done in the future, as there is no monopoly of Shri Gaurav Agrawal. At the Sarafa there are number of gold/ jewellery shop who give immediately delivery against any receipts.

9.1.5. Considering the above, facts, it is clear that the assessee failed to explain the source of cash of Rs. 16,96,390/- and failed to furnish any documentary evidence in support of his contentions as contested during the course of statement u/s 132(4) and search. Accordingly, cash of Rs. 16,96,390/- is treated as unexplained money

12. The Id. CIT(A) upheld the addition. It was held that the assessee initially submitted through his statement recorded u/s 132(4) that the receipts were out of sale proceeds of that day and the previous day but no evidence in support was neither filed. The Id. CIT(A) held that, the assessee flip flopped from saying that the cash was indeed commission income from sale of bullion and later on that the amount is covered in surrendered amount. The Id. CIT(A) held that, from such behavior of the assessee at different stages cannot be given any credence as the assessee has been trying to overshadow the unaccounted money.

13. Before us the Id. AR reiterated the arguments taken up before the Id. CIT(A) and the Id. AR supported the orders of the Revenue authorities.

14. Heard the arguments of both the parties and perused the material available on record.

15. The total amount found at the premises was Rs.16,96,390/- and on the date of search, the statement of Shri Jiternder Gagwani was recorded who owned the amount of Rs. 4,00,000/- hence the Revenue has also accepted on the date of search about the amount of Rs. 4,00,000/- and seized Rs.12,96,390/- only. Hence, we hereby restrict the addition to Rs. 12,96,390/-and relief of Rs. 4,00,000/- has been recorded based on the events that took place on the date of search.

16. The appeal of the assessee on the ground is partly allowed.

ITA No. 39/JAB/2019 (Revenue Appeal)**Unexplained cash credit-Rs. 67.85 Cr.**

17. Excerpts from the Assessment Order:

A search and seizure action u/s 132 of the Income-tax Act, 1961 was conducted at the various premises of Shri Manish Saraogi, Shri Naresh Poddar & Naresh Burman Group of Katni on 21.03.2016. A search action u/s 132 was executed on 4 premises which included residence of Shri Manish Saraogi, Shri Naresh Poddar and Shri Naresh Burman and survey u/s 133A of the I.T. Act, 1961 was also conducted at the business premise of Shri Manish Saraogi. During the search, some loose papers seized from the office premise of Shri Manish Saraog i.e. Shop No. 40-41 Gajanan Complex, Katni, it was found that certain loose papers were in the form of cash deposit slip pertaining to Acc No 941320110000145. The cash deposit slips pertaining to GS Bullion is on Page No. 3, 5, 6, 12 of LPI-1 of the business premise of Shri Manish Saraogi. Shop No. 40-41, Gajanan Complex, Katni amounted to Rs 1.50 Crores. Subsequently summons was issued to Bank of India, Madhavnagar, Katni for further verification. On the perusal of the Bank Statement of the above mentioned Account No. it was found that this account pertains to M/s GS Bullion (Prop Gaurav Agarwal Bullion and a total of Rs 1,09,11,51,100/- was deposited in cash in this account.

18. The total cash deposits from 01.04.2014 to 06.01.2016 were to the tune of Rs. 109,11,51,100/- which consist of Rs. 67,85,00,110/- for the current year and Rs. 41,26,51,000/- for the earlier assessment year. The amounts deposited wearied from Rs 1,01,000/- to Rs. 94,00,000/- on each date.

19. Before the AO during the assessment proceedings the assessee submitted that these transactions have been duly recorded in the books of accounts and the cash was received again the sale of silver and is duly accounted for.

20. The AO held that, the sales of gold are always in cash it is not routine manner of conducting the business. The AO held that, all these bills reveals that in these bills the column of the purchaser is blank which means that it not known who the buyer was or of who made purchases from the assessee. It was held that, it is not mere coincidence that in none of the bill contains name of the purchaser. The AO has also held that, the audit report that the assessee has furnished copy of trading account for AY 14-15 and AY 15-16 and there are branches of the assessee at Ahemdabad, Indore (H.O.), Delhi and Mumbai. No branch at Katni is shown in audit report of two years i.e. AY 15-16 and 16-17. Hence, the cash deposited in Katni is unexplained cash deposit in the hands of assessee.

21. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition.

22. Aggrieved, the assessee filed appeal before the ITAT.

23. Excerpts from the order of the Id. CIT(A):

- The AO during the course of assessment proceedings required the assessee to explain and furnish copy of bank account statements along with nature of debit and credit entries, comparative chart of gross receipt/gross profit/net profit, details of stock in trade and valuation of closing stock and copy of balance sheet furnished in bank

for acquiring cash credit facility. However, the assessee failed to file any such document as required by the AO.

- The AO on perusal of reply of assessee found that all the sales are cash sales and the copy of bills submitted by the assessee does not contain names of the purchaser. The AO further observed that the assessee tried to manipulate the bank transactions by getting bogus bills.
- Further trading account of assessee for AY 2014-15 & A.Y. 2015-16 does not show any branches at Katni, Jabalpur. However, huge cash has been deposited at Katni and closing stock as on 31.03.2015 and 31.03.2016 was shown as Nil by the assessee.
- The assessee submitted that Rs. 50,00,000/- was received in cash for sale of silver bullion on 17.09.2015. The cash received against the various vouchers starting from 33436 to 33499 were produced before the AO. The assessee submitted that sum of Rs. 60,00,000/- was received in cash for sale of silver bullion on 21.10.2015. The cash received against the various vouchers starting from 39035 to 39106 were produced before the AO. The assessee submitted that sum of Rs. 20,00,000/- was received in cash for sale of gold bullion on 20.10.2015. The cash received against the various vouchers starting from 38711 to 38739 were produced before the AO along with copy of ITR, Audit report and VAT returns.
- The assessee has also produced sales register, cash book and copy of bank statement before the AO. The assessee

thereafter, has claimed that the cash sales have been deposited in Bank of India account at Katni and the cash sales is included in the total sales amounting to Rs. 473,15,73,005/- in AY 2015-16 and Rs. 426,10,88,641/- in AY 2016-17 and the net profit of Rs. 24,59,233/- for AY 2015-16 and Rs. 15,33,386/- for AY 2016-17 as generated from these sales were offered for tax in respective assessment years.

- During the course of search 4 cash deposit slips were found from possession of Shri Manish Sarogi which pertains to M/s GS Bullion. The assessee explained that loose papers, sales of silver bullion executed in cash on 17.09.2015, sales of gold bullion executed in cash on 20.10.2015 and in support has filed copies of voucher no 38711 to 38739.
- The AO has also stated that, no branch of the assessee is functional at katni, however, huge cash has been deposited at BOI, Katni. On perusal of copies of bills scanned by the AO in the body of assessment order it is seen that in most of the bills place of delivery is "Tikamgarh" which is near to Katni, however, the bills have been generated from GS Bullion Delhi or Ahmedabad branch.
- The AO failed to bring on record any instance where it could have been ascertained that the cash deposited in bank account is not properly recorded/reflected in books of assessee. The AO presumed in the lights of facts that

few of the cash deposit slips were found in possession of Shri Manish Sarogi, the entire cash deposit in bank account is undisclosed income of the assessee and neglected the other key facts of the case. The AO has also alleged that undisclosed income of GS Bullion has been routed through bank account of assessee which has been controlled by Shri Manish Sarogi and others.

- The additions made by the AO are on sheer assumption and presumption basis. The cash deposit slips were found during the course of search for which the assessee has discharged its onus with supportive evidences. Now it for the AO to prove that the contentions raised by the assessee are incorrect, which he failed to do so.
- The additions cannot be confirmed as legitimate as there was ample evidence that the amount credited in the bank is out of sale consideration, which was duly recorded in the books of the assessee and the same was disclosed in his VAT Returns, Audit Reports and Income Tax Return for the concerned Assessment Year.

24. Before us the Id. AR relied on the order of the Id. CIT(A) and Id. DR relied on the order of the Assessing Officer.

25. The main grievance of the Revenue was that the very fact of existence of Katni Branch was not shown in the audit reports, whereas cash has been deposited in the Katni Bank Branch. The Id. CIT(A) after perusal of the bills categorically held that, in most of these bills place of delivery is Tikamgrah which is close to Katni and the bills have been generated from

the G S Bullion, Delhi and Ahemdabad Branch. The cash pertaining to the deposit slip in the seized material has also been duly reflected in the bank account. The Id. CIT(A) also held that, the total cash deposited in the bank account of Rs. 67,85,00,100/- has been a part of total sale of Rs. 426,10,88,641/- The Id. CIT(A) has held that, it is uncontroverted position that no incriminating material was found in the search operations qua the additions and hence the additions cannot be confirmed as legitimate as there was ample evidence that the amount credited in the bank is out of sale consideration, which was duly recorded in the books and tallied with VAT Returns, Audit Reports and Income Tax Return for the concerned Assessment Year. In the absence of any factual inaccuracies are perversity in the order of the Id. CIT(A), we decline to interfere with the order of the Id. CIT(A) on this issue.

Unaccounted Money-Rs.2,58,68,950:

26. Excerpts from the Assessment Order:

During the course of search loose papers which *prima facie* represent undisclosed income/expenditure of the assessee were found and duly seized. Page no 22 of LPS-1 contains unexplained income of the assessee, seized from the assessee's premise located at Agrawal Market, Sarafa, Jabalpur. During the course of search statement of the assessee was recorded u/s 132(4) and asked to explain contents of the said loose papers. The assessee in his statmenet recorded accepted that he is involved in the activity of unregistered purchase of gold but he does not keep the details of unregistered purchase. The assessee also stated in his statement that 1397.000 denote Rs 13,97,000/-. In the question no 38,

similarly, in response to question of 40, he accepted that 117.600 denotes Rs 1,17,600/-. To question no 52 he again accepted that 239.200 denotes Rs 2,39,200/-. The seized documents have been deciphered as under:-

Transactions suffixed with 'P' denotes purchase of gold with value of Peti where 1 Peti indicates Rs 1,00,000/- (one lakh). In the said seized papers there are number of entries which suffixed with P alongwith a unique reference number. Transactions quoted in the said seized paper are tabulated hereunder;

| S.No. | Entry quoted | Amount denotes |
|-------|--------------|----------------|
| 1 | 499.250 | 499250 |
| 2 | 205.000 | 205000 |
| 3 | 3P | 300000 |
| 4 | 1397.000 | 1397000 |
| 5 | 4P | 400000 |
| 6 | 117.600 | 117600 |
| 7 | 407.100 | 407100 |
| 8 | 2P | 200000 |
| 9 | 3P | 300000 |
| 10 | 1497.000 | 1497000 |
| 11 | 368.000 | 368000 |
| 12 | 5P | 500000 |
| 13 | 7P | 700000 |
| 14 | 13P | 1300000 |
| 15 | 25 P | 2500000 |
| 16 | 10P | 1000000 |
| 17 | 199.500 | 199500 |
| 18 | 239.500 | 239500 |
| 19 | 5P | 500000 |
| 20 | 3P | 300000 |
| 21 | 75P | 7500000 |
| 22 | 162.000 | 162000 |
| 23 | 1060.000 | 1060000 |
| 24 | 217.000 | 217000 |
| 25 | 5P | 500000 |
| 26 | 25P | 2500000 |

| | | |
|----|-------|----------|
| 27 | 10P | 1000000 |
| | Total | 25868950 |

27. On perusal of above statement, given by the assessee, the Assessing Officer held that is clear, the assessee had his unaccounted purchase of gold from unregistered dealers. Holding thus, the Assessing Officer treated the amount of Rs. 2,58,68,950/- as undisclosed income in the hands of the assessee.

28. Aggrieved, the assessee filed appeal before the Id. CIT(A).

29. Excerpts from the order of the Id. CIT(A) :

- During the statement recorded on oath the assessee has surrendered sum of Rs. 75,00,000/- (Rs. 24,00,000/- as commission income from business of bullion and Rs. 51,00,000/- as per LPS page no 35). The entire amount of Rs. 75,00,000/- has also been taken into consideration while filing return of income for AY 2016-17. D
- During the course of assessment proceedings before the AO has explained that transaction as mentioned on loose paper no 22 of IPS-I are rough jottings of transactions related to activities of bullion trading carried out by the assessee for total amount of Rs. 1,50,57,000/- which were not recorded in books of accounts. The profit from such activity was @ 0.14% (as per audited financial statement of M/s GS Bullion for AY 2016-17) which works out at Rs. 21,080/-.
- The assessee by taking alternative plea submitted that a sum of Rs. 24,00,000/- was also surrendered as undisclosed income from bullion trading, dealing and

commission for AY 2016-17 which includes sum of Rs. 21,080/-.

- Alternatively, the transactions recorded on the impinged loose paper by stating that assessee was acting as a mediator as a commission agent and has earned only commission income as the transactions were not carried out by him on his account. The bullion trade transaction as mentioned on the impugned loose paper amounting to Rs. 2,58,68,650/- was directly remitted by various customers who purchased the gold bullion directly from the dealer and the appellant only acted as a commission agent. The profit earned by the appellant was @ 0.10% of the transaction which works out at Rs. 25,870/- which is also included in the additional income surrendered during the search.
- Out of 27 transactions 15 transactions are duly recorded in books of accounts and in support has filed a detailed chart. As per the chart, the purchases were of Rs. 48,207/- whereas the AO consider the amount has Rs. 1,95,00,000/- the real un-recorded purchases were to the tune of Rs. 63,68,950/- hence commission @ 0.04% was justifiable.

30. Before us the Id. AR relied on the order of the Id. CIT(A) and Id. DR relied on the order of the Assessing Officer.

31. Heard the arguments of both the parties and perused the material available on record.

32. An examination of the depicted examination of the loose papers page 22 of LPS-1 at page no. 31 of the order of the Id.

CIT(A), and the entries quoted at page no. 28 of the CIT(A) order, after taking into consideration the items which have been recorded in the books of accounts viz. 3,5,8,9,12,13,14,15,16, 19,20,21,25,26 & 27, we hold that the Id. CIT(A) has rightly determined the percentage of gross profit on the un-recorded transactions.

33. Hence, we decline to interfere with the order of the Id. CIT(A) on this issue.

Undisclosed income- Rs. 1.04 cr.

34. This addition was based on seized document marked as page no. 35 to 39 and 45 of the Annexure LPS-1. The assessee based on these documents surrendered Rs. 51 lacs in the statement u/s 132(4) record during the course of search.

35. Excerpts from the Assessment Order:

During the assessment proceedings, questionnaire u/s 142(1) was issued to the assessee to explain the nature and source of such expenditure/receipts, the assessee submitted his reply in respect of page 35 of LPS-1 vide reply dated 09.10.2017 which is as under;

"This paper contains the rough jottings of transactions related to the Business Transaction pertaining to the Bullion trading activities done by Shri Gaurav Agrawal during the period from 01-04-2015 to 31-03-2016. The assessee has surrendered an amount of Rs. 75,00,000/- as unaccounted income based on the loose papers found and has duly incorporated such amount in the returns filed by him in response to notice u/s. 142(1) of the Income Tax Act, 1961."

36. The AO held that, no explanation was offered by the assessee in regard of source of transactions as quoted in the seized papers marked as 36, 37, 37Back, 38, 38Back, 39, 39Back & 45. It was held that, the assessee surrendered whole amount of Rs. 75 lakhs in respect of loose paper marked as 22 and 35 (partially) of LPS, however, the assessee failed to explain nature and source of page no 35 to 39 & 45. The AO held that, the submission made by the assessee is not reliable and not acceptable as the assessee had accepted that he is involved in the business of gold/bullion trading. The assessee failed to produce books of account hence transactions quoted in the said loose papers marked as page 35, 36, 37, 38 & 39 & 45 could not be verified. The assessee adopted modus operandi of Gold/Bullion trading in cash and habitual to not records the transaction in the books of account. Holding thus the AO computed an amount of Rs. 1,79,33,573/- on account of the jottings on page no. 35 to 39 and 45. The AO after giving a benefit of Rs. 75,00,000/- surrendered during the search, treated the remaining amount of Rs. 1,04,33,573/- as undisclosed income.

37. Aggrieved, the assessee filed appeal before the Id. CIT(A)

38. The Id. CIT(A) deleted the addition and determined the gross profit on the amount mentioned on the seized material considering the same as unaccounted bullion trading transactions.

39. Aggrieved, the assessee filed appeal before the ITAT.

40. Before us the Id. AR relied on the order of the Id. CIT(A) and Id. DR relied on the order of the Assessing Officer.

41. Heard the arguments of both the parties and perused the material available on record.

42. The facts narrows down to, the assessee as per the seized material the assessee received an amount of Rs. 1,50,00,000/- and the assessee has also surrendered an amount of Rs. 51,00,000/-. The question arose as to how the surrender of Rs. 51,00,000/- be justified when the seized material reflects transactions of Rs. 1,50,00,000/-. The Id. CIT(A) has categorically held that, an entity namely M/s. Indore Bullion & Jewelers also has the office in the same premises and these transactions are pertain to that entity. The Id. CIT(A) rightly held that, these transactions pertain to bank charges and only the amount reflected on page no. 35 of LPS-1 of Rs. 99,00,000/- be considered as unaccounted business transaction and determined gross profit @0.14 only unaccounted transactions. Hence, we decline to interfere with the order of the Id. CIT(A) on this issue.

43. In the result, the appeal of the assessee is allowed for statistical purposes and appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 01/12/2023.

Sd/-
(Yogesh Kumar U.S)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Jabalpur Dated: 01/12/2023

NV, Sr. PS

ITA No. 37 & 39/ JAB/2019
Gaurav Agrawal,

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT JABALPUR**