

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"B" JAIPUR

श्रीसंदीप गोसाई,न्यायिक सदस्य एव श्रीराठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 433/JP/2023  
निर्धारणवर्ष / Assessment Year : 2018-19

Balaji Jewellers G-5, Siddhi Vinayak Complex Maniram Ji Ki Kothi, Haldiyan Ka Rasta Jaipur 302 003	बनाम Vs.	The ACIT Central Circle-4 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAOFB 3695 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta, Advocate  
राजस्व की ओर से / Revenue by: Shri Ajay Malik, CIT

सुनवाई की तारीख / Date of Hearing : 10/10/2023  
उदघोषणा की तारीख / Date of Pronouncement: 04 /01/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A)-5, Jaipur dated 12-07-2023, or the assessment year 2018-19 wherein the assessee has raised following grounds of appeal.

1. The impugned Assessment Order U/s 143(3) dated 30/12/2019 as well as the Notices issued Notice issued are illegal, bad in law and on the facts of the case for want of jurisdiction, barred by limitation and various other reasons (grounds), against the provisions and procedure as per law and further contrary to the real facts of the case hence all the consequent notices as well as the subsequent

proceedings invalid, illegal and bad in law hence liable to be quashed.

2. **Search Action U/s 132 is illegal;** The search action taken u/s 132 is illegal, bad in law and on the facts of the case for want of jurisdiction and various other reasons, against the provisions and procedure as per law and further contrary to the real facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal and bad in law hence liable to be quashed.
3. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 90,00,000/- made by the Ld. AO on account of alleged Un disclosed Income U/s 68 by taking the view that cash found during the course of search/seizure is not backed by valid Books of accounts as it has been rejected, and also erred without bringing any cogent material in support of his contention and without bringing corroborative evidence and without considering the materials and explanations available on records in their true perspective and sense, and also erred in invoking the provisions of Section 145(3). Hence the addition so made by Ld. AO and confirmed by the Ld. CIT (A) is being contrary to the provisions of the law and facts of the case therefore the same may kindly be deleted in toto,
4. Invocation of Section 115BBE is illegal: The AO as grossly erred in law as well as in facts in invoking the provision of Section 115BE of the Act, in the present case for taxing the income at higher rate the provisions is not applicable in the present case hence the same is illegal, bad in law, against the principles of natural justice. The same may kindly be deleted in full.
5. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B and C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

6. That the appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.

2.1 Apropos Ground Nos. 1 to 3 of the assessee, brief facts of the case are that a search and action u/s 132 of the Income Tax and or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Balaji Jewellers Group, Jaipur on 15-02-2018 at which the assessee is one of the members. During the course of above referred action (s) cash, jewellery, valuables documents books of accounts, and / or loose papers were found and / or seized from the premises of the members of the Balaji Jewellers Group of which one such member happens to be the assessee. It is noted from the assessment order that return of income was filed u/s 139(1) of the Act, 1961 on 19-09-2018 for the assessment year 2018-19 declaring total income at Rs.1,01,880/-. It is also noted that the assessee is a partnership firm which is trading in gold and silver bullion and ornaments. The during the course of assessment proceedings noted that the assessee has shown gross profit of Rs.30,64,069.86 on the turnover of Rs.1,67,39,42,279.68. In this case, a notice u/s 143(2) of the Act for the assessment year 2018-19 was issued on 11-09-2019 by the AO and duly served upon the assessee. Notice u/s 142() of the Act with questionnaire was issued on 10-10-2019 and the Id.AR of the assessee Shri

Ashok Gupta attended the case from time to time and discussed the issue at length. The AO observed in this case that a survey action u/s 133 of the Act was started at the business premises of the assessee which was converted into search u/s 132 of the Act on recovering cash of Rs.90.83 lacs from the business premises of the assessee. During the search proceedings, the parties claimed that the source of the cash is from their sales which are duly recorded in their regular books of accounts. However, in the absence of any supporting evidences, the cash of Rs.90 lacs was seized leaving the balance of Rs.63,000/- with the assessee and thus the AO made the following narrations in the assessment order.

**“7. Non Production of books during initial few hourse of survey operation “** During the initial hours of the survey/ search operation, the books of the firm were not produced before the Income Tax Officials, except some sale bills of certain period, as assessee did not have any books of account atthe business premises. Therefore, position of stock and cash in hand could not be verified.

**8. No stock, no weighing scale and no device for cutting the buillion etc were found at the business premises:-** During the survey/ search action, it was noticed that no stock was found at thebusiness premises, there was also no facility or tools for weighingthe gold and silver, nor was there any facility for cutting the bullion in to pieces of required quantity (weight).

**9. Books of accounts claimed to have been maintained on Laptop, produced in tampered and manipulated form :-** After a lapse of more than 4 hours from the initiation of survey Operation i.e. after 5:00PM on 15.02.2018, the accountant of M/s BalajiJewellers, ShriMahendra Sharma appeared at the shop where survey proceedings was going on. He brought a

laptop with him and claimed that the regular books of accounts were maintained on that laptop. It was seen that the audit mode of Tally was not enabled in his laptop.

**10. No sale bills/Invoices/ vouchers furnished by assessee during survey and search action:-** During the survey and search action, assessee failed to furnish the tax invoices/bills or vouchers in respect of sale which assessee claimed to be the source of the cash found at his business premises, Whereas, this is established and very essential practice of business to issue the bill/tax invoice of sale without which the sale cannot be said to have taken place and also especially in the case of items like precious metals of Gold/silver.

**10.1** During the search action, the partner, Shri Sourabh Garg was specifically requested to produce the sale bills for the period after 19.01.2018 as the sale bills for the date till 19.01.2018 were found during search. But Shri Sourabh Garg failed to produce the sale bills related to the period after 19.01.2018 and he stated (query No. 09) that only single copy of sale bills related to period after 19.01.2018 was generated which was taken by the customer. Further he was asked why the second copy was not printed. In reply to this Shri Sourabh Garg stated that this is the responsibility of the accountant but he (accountant) did not print the bills. He further stated that second copy of sale bills were printed after interval of 10-15 days as per convenience.

**11. Faulty Billing system and no printing facility at the shop:-** In his statement recorded u/s 131, Shri Rahul Singhal (vide question No. 23) was asked about the accounting process of M/s Balaji Jewellers. In his reply, he stated that, in the sales of M/s Balaji Jewellers, there was a ratio of 50:50 of cash and cheque sales. He further stated that the sold goods are delivered in the evening after the bills were prepared by their accountant Shri Mahendra Sharma on his laptop. Further, he stated that bills were printed in a single copy to give to the customer at Mahendra Sharma's residence and there was no printer facility at the shop and any of the partners signed the bills. He further added that these second copies of sale bills were printed at the interval of 10-15 days as per convenience. A counter question was asked that when the printing facility was not available at the shop and the bills were printed at the accountant's residence, then, how the sale bills are handed over to the customers. In his reply, he claimed that sale bill was not given to the

customer at the time of delivery, but the customer was allowed to take photo of the bill from the computerscreen and the customer came on the next day to collect the sale bill. The claim of assessee is not acceptable as it is evident that the laptop was in possession of their part time accountant all the time. In this situation, if accountant is not at their business premises and customer purchased goods then how did they provide them with a copy of sale bill

**12. Audit feature of Tally was disabled on the laptop:-** During the statement recorded u/s 131, ShriMahendra Sharma, Accountant of M/sBalajiJewellers was asked (vide question No.20) whether the audit feature of Tally program, under which the said books of accounts of M/s BalajiJewellers were kept and maintained was On or Off i.e. enabled or disabled. In reply, ShriMahendra Sharma categorically stated that the audit feature was disabled. The audit feature being disabled dilutes the authenticity of the accounts maintained on the program.

On the above observation, the assessee filed reply which is reproduced at page no. 4 to 10 of the assessment order. However the AO did not accept the reply of the assessee and made addition of Rs.90 lacs u/s 68 of the Act in the hands of the assessee by observing as under:-

*“The assessee has tried to justify the source of cash found at the business premises during the search. But in view of the issues raised beforehand, regarding faulty billing system of the assessee, no bills after 19/01/2018 found at the business premises, non production of the books of accounts at the initial hours of the survey/ search and the audit feature of Tally being not enabled, leads to distinguishing the books of accounts of the assessee to be rejected u/145(3) of the I. T. Act, 1961.*

*Moreover, on perusal of the bank statement, it is seen that the assessee has deposited the cash of Rs. 2,00,000/- on 29/12/2017 in their AXIS Bank account, since then no cash was deposited in the bank accounts of the firm, neither in ICICI nor in Dena Bank accounts (till 15/02/2018). On perusal of the trial balance as on 19/01/2018, seized and impounded on 15/02/2018, as per the Tally data in the hard disk, it is seen that the cash*

*balance as on 19/01/2018 is of Rs. 13,99,670.78. The cash balance as on the date of search is Rs. 90,80,291.78. On examination of the sales register, it is seen that from 19/01/2018 to 12/02/2018, the total of cash sales has been of Rs. 3,11,498/- only. But from the perusal of the cash sales on 13/02/2018 and on 14/02/2018, on the days just before the survey/ search, the cash sales have been of Rs. 37,49,299/- and Rs. 34,78,403.38. It is evident that the Tally data has been tampered with and manipulated to match with the cash found during the survey/search. The accountant had not arrived at the business premises even after being called repeatedly and came almost four hours late. As per the computer expert, the laptop was operational during the period. In view of the discussion above, the books of the assessee is being rejected u/s 145(3) of the I. T. Act, 1961 and as the cash found at the premises is proved unexplainable, an amount of Rs. 90,00,000/- is added to the income of the assessee u/s 68 of the I. T. Act, 1961.”*

It is also worthwhile to mention that the AO after making addition of Rs. 90,00,000/- u/s 68 also invoked the provision of section 115BBE for taxing the income on higher rate.

2.2 Being aggrieved by the order of the AO, the assessee carried the matter before the Id. CIT(A) who confirmed the action of the AO by observing at para 5 & 6 ( at pages 23 to 30) as under:-

“I have considered the facts of the case and written submission of the appellant as against the observations/ findings of the AO in the assessment order for the year under consideration. All grounds are related to only one addition of Rs 90 lakh u/s 68, therefore all of them taken as together. The contentions/ submissions of the appellant are being discussed and decided as under:-

1. The appellant’s plea that the search action is illegal is not true. Initially a survey action was started and conducted during business hours and due to the huge amount of cash

found, the same was converted into search under the provisions of the Income Tax Act.

2. Further the appellant's plea that the addition made u/s 68 is illegal. Initially the unaccounted cash was found, but later the appellant had presented the books showing the source of such cash found was from cash sale credited in books. Thus the AO had rightly made addition u/s 68 being unexplained cash credit.
3. The appellant had relied on the judgments of

M/s Hirapanna Jewellers, Vishakhapatnam ITA No 253/2020 for AY 17-18.

Smt Harshila Chordia 298 ITR349

CIT vs Associated Transport (P) Ltd 212 ITR 417

Heera Steel Ltd v/s ITO 4 ITJ 437 Nagpur ITAT

And many others.....

The facts of the above referred cases are different from the present case. In the present case the source of cash sales is doubtful and the appellant had not been able to prove the same as genuine. Therefore such cash credits come under the purview of section 68. In the referred cases the cash sale was proved to be genuine, which is not in the present case. Therefore the case laws referred by the appellant are not applicable.

1. The appellant submitted that they had been in cash sale since long and had been used to deposit cash in bank on regular basis. The appellant had also given cash sales figures with percentage to total sale for past years. On analysis of these figures, it is noticed that the percentage in cash sales has been continuously reducing for the last 4 years. i.e. from 75 % of cash sale to only 9% of cash sale from FY

2014-15 to 2017-18. Further on perusal of sales register submitted by the appellant, it is noticed that following cash sales are noticed in last few months:

Date	Amount of cash sale
8January2018	54204
12January2018	30764
15January2018	838791
15January 2018	16246
16January 2018	18988
17January 2018	9164
18January 2018	27283
19January 2018	16499
22January 2018	47647
25January 2018	15664
29January 2018	7807
31January 2018	9398
31January 2018	12116
2February 2018	9189
3February 2018	29902
3February 2018	9048
5February 2018	8970
7February 2018	31912

7February 2018	8926
7February2018	4851
8February2018	9064
10February2018	20679

1. From the above figures for the past 2 months, it is noticed that there were not many cash sales on a daily basis. So, when the cash of Rs 90 lakhs had found and seized during the search action, then the appellant had claimed that there was cash sale on 13 February 2018 was Rs 37,49,299/- and cash sale on 14 February 2018 was Rs 34,78,403/-. These cash figures are total of various small cash sale bills of that particular day for which no sale vouchers were produced or find during search action.

2. Further on perusal of bank accounts, it is noticed that the appellant had deposited the cash of Rs 2 lakh on 29 December 2017 and since then no cash was deposited in the bank accounts of the firm as discussed in assessment order. This shows that there were no many big cash sales since long. So just before 2 days of search and survey action claiming of such huge cash sale is just to cover the huge cash found at the office premise.

3. Further on verification of cash book, it is noticed that the appellant was following a practice of depositing all cash generated by cash sale to firm's bank account on daily basis. For example:

Date	Cash generated	Cash deposited in Bank
11 May 2017	1010354	1200420
12 May 2017	1103883	1200000
15 May 2017	1453245	1200360
16 May 2017	1798973	1800000
17 May 2017	1599418	1500000

18 May 2017

1799120

1800440

and so on.....

1. So whenever there is a huge cash sales, the appellant deposited the same cash in bank account on the same day. So not depositing such huge cash generated from such cash sale (cash sale on 13 February 2018 was claimed at Rs 37,49,299/- and cash sale on 14 February 2018 was claimed at Rs 34,78,403/-) in the bank account and keeping such huge cash at business premise is not normal to firms' regular business practice. It leads to the conclusion that the appellant had tried to cover the huge amount of cash found at the office premises from these last 2 days cash sales figures.

2. In reference to such various small cash sale as claimed by the appellant for 13 and 14 February 2018, the appellant must have needed the weighing scale to measure the quantity and must had needed some devices for cutting the bullion, but no such instrument had found at the business premise during the course of survey/ search action. On this fact the appellant had claimed that they sent the bullion of big piece outside to get it cut and measured and for which they had paid expense in cash. On perusal of cash book, no such expenses were debited on these dates.

1. It is a fact that during the course of survey/ search action, the appellant had failed to furnish the invoice bills of all such cash sale bills for 13 February 2018 total of Rs 37,49,299/- and bills of all such cash sale bills for 14 February 2018 total of Rs 34,78,403/-. These cash figures are total of various small cash sale bills of that particular day. In one hand the appellant is claiming that they had sold in cash and explaining the source of seized cash from such cash sale and on another hand, they had failed to furnish such cash sale bills during the search action. Later it was claimed that they had taken only one printout and had given it to customers. Further there are no printing facilities at the business premises. The appellant tried to narrate the

story that they sold the bullion in cash without giving bill and bills were prepared by their accountant at his house and deliver the bill to their customer on next day or as per their convenience. The above reasons are completely on irrational business practice and cannot be relied on at all. The conduct of the assessee was incomprehensible and abnormal.

2. Further the reasons narrated by the assessing officer in para 7,9,10,11 and 12 of assessment order dated 30/12/2019 lead to a conclusion that the books of accounts are not reliable.

1. No regular books of accounts e.g. cash book, ledger etc. were maintained by the appellant at the business premises. So, when the appellant was asked to furnish books along with cash bills to support the cash found during search then the appellant was not able to produce the same. Later on, the appellant called the accountant with his laptop in which the tally software was not edit enabled as narrated by AO in his order, therefore there was ample opportunities to temper their cash book as narrated by AO in his order. Further other circumstantial evidence as narrated in above paras gives a conclusion that the books were not reliable. Thus, it is evident that these books were prepared later on so as to derive credit from concealed income and were product of an afterthought.

1. Invoking provisions of Section 145(3) of the Act, the Assessing Officer had come to a firm finding that no reliance could be placed on the entries in the said books of accounts of the assessee. Many defects were noticed and pointed out in such books of accounts of the assessee. From the totality of facts and circumstances, it is a clear-cut case of manipulation of books of accounts. At the time of survey and search, books of accounts had not been found to have been written and these were prepared later on. In view of the facts discussed above, the only inference which can be drawn is that the entire exercise was carried out just to set off the cash found during survey. Considering

the above findings and facts it is concluded that the AO had rightly rejected books u/s 145(3) of the Act.

2. To apply any case law rendered by Hon'ble Courts to any one's particular case, it is of common knowledge, that the facts in the case relied upon should be identical to the facts of their particular case. Mere reliance on the case laws is of no help. Once the primary burden of proving the genuineness of a credit transaction in the books of account of an assessee is not proved and is shrouded by many conjunctions/juxtapositions and surmises/assumptions, the other two conditions though considered as proved should, not come to the rescue of the assessee in treating the said credit as explained.

3. Further, the appellant claimed that there is double taxation by making addition u/s 68. The same is not true. The Hon'ble Apex Court in the case of CIT v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 observed that where there is an unexplained credit, it is open to the AO to hold that it is income of the assessee, and no further burden lies on the AO to show that the income is from any particular source. It is for the assessee to prove that, even if the sundry creditors represent income, it is income from a source which has already been taxed. There is nothing in law which prevents the AO in an appropriate case in taxing both sundry credit, the source and nature of which is not satisfactorily explained, and the business income estimate by him after rejecting the books of account of the assessee as unreliable.

4. The law is simple and unambiguous. When a sum is found credited in the books of account of the assessee, he has to explain the same, and in the event of the assessee's failure to do so, that amount is treated as unexplained credit under section 68. When an assessee sold bullion in cash and the same cash had introduced in books then they should be support something. Absence of cash bills, weighing scale, cutting machine, printing facility of bills etc are going against the

appellant's claim, therefore, when the assessee does not have a reasonable explanation about the credit appearing in the account, as in this case, the AO is perfectly justified in making the addition under section 68.

5. The appellant had also claimed that the cash sale in question had been offered in GST return. It is important to mention here that the assessee had to file quarterly and other monthly compliances voluntarily. Taking such cash sale figures in GST does not make an evidence for genuineness because the Income tax department had conducted survey and search action on the business premises and with the evidence collected from there, the AO had made an assessment on it. So merely filing return under GST would not be a shield or safeguard for the appellant.

6. As discussed above, that books of accounts of the year under consideration were not reliable. Cash introduced in the cash book to cover up the cash found during action cannot be said to be covered by cash sales. The plea of the appellant is, therefore, not tenable and hence cash of Rs. 90 lakh found during survey and search action and introduced in the cash book is held to be income from undisclosed sources and hence addition thereof made by the AO is, hereby, confirmed.”

6. In the result, all grounds of appeals are hereby dismissed.”

2.3 Aggrieved by the order of Id. CIT(A), the assessee has preferred the present appeal before us on the grounds mentioned hereinabove for which The Id. AR of the assessee to this effect has filed the following written submissions.

1. Addition made u/s 68 wrongly: 1.1 The AO has made the addition of Rs. 90,00,000/- U/s 68 by stating that that “**as the cash found at the premises is proved unexplainable, an amount of Rs. 90,00,000/- is added to the income of the assessee u/s 68 of the I.T. Act, 1961.**” And the ld. CIT(A) has also confirmed the same. This observation is purely related to Cash found at premises instead of any finding about any sum found credited in the books of accounts which is mandatory findings as per provisions of Section 68 of the Act, therefore first would like to reproduce the Section 68;

“**S. 68. Cash credits.**—Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.....”

By bare perusal of the section it is revealed that Section 68 shall be invoked only in the cases where any sum is found credited in the books of accounts of the assessee and assessee could not provide the explanation about the nature and source of such credited sum or offered explanation is not satisfactory in the opinion of the assessing officer then such credited sum may be charged to income tax as income of the assessee of that previous year.

In the case of **CIT V/s G.K. Contractor 19 DTR 305(Raj.)** it has been held that Income—Cash credit—Estimation of profit after rejection of books of account—AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee’s books of account by invoking the provisions of s. 145(3), no separate addition can be made on account of cash credit under s. 68 even though the assessee has failed to discharge its onus of

proof in explaining the amount shown in the books of account as 'market outstanding'—No substantial question of law arises for consideration

**1.2** While the lower authorities have been pressing the findings of Cash in the premises not sum credited in the books of accounts. Here it is appreciable that all such cash as found by the investigation team during the course of survey/search proceedings duly recorded in the books of accounts under the head of Sales and duly included in the income of the assessee appellant which has been offered for tax during the course of filling of the income tax return for that particular AY i.e. 2018-19 and same has not been disturbed by the Ld. AO during the course of assessment proceedings means thereby one side Ld. AO has not raised any dispute about the Sales as shown by the assessee in their Books of Accounts through which Financial Audited statement has been culminated and the Income Tax has been paid to the Government Exchequer. Simultaneously on the other side he is raising the question about such Cash of Rs.90,00,000/- as founded from chest of the assessee's business premises such double approach for taking an issue is certainly not appreciable from the Sovereign Government and this step does not lead the Principle of Harmonious construction of the Government.

**1.3** Further, in the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is engaged in the jewellery business and maintaining the regular stock registers. Both the DDIT (Inv.) and the AO have conducted the surveys on different dates, independently and

no differences were found in the stock register or the stocks of the assessee. Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/ stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account (PB100) in Annexure-14 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the lower authority as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion may be strong however cannot take the place of reality, are the settled principles kindly refer **Dhakeshwari Cotton Mills 26 ITR 775 (SC)** also refer **R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag)**, **Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All)**. Also refer CIT v/s

**KulwantRai 291 ITR 36( Del). In CIT v/s Shalimar BuildwellPvt Ltd 86 CCH 250(All)** it has been held that the AO made the addition merely on **suspicion** which was not desirable in the eye of law.

#### **1.4 Kindly refer**

(a) Reliance is placed on same and identical matter where **Hon'ble VISAKHAPATNAM ITAT Bench (DB) in the matter of M/s Hirapanna Jewellers, Visakhapatnam ITA No. 253/2020 for AY 2017-18** has very well supported the view of assessee as follows;

“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.”

(b) Reliance is placed on the decision of **Hon'ble Rajasthan High Court in the case of Smt. Harshia Chordia vs ITO (2008) 298 ITR 349** in which it was held that

"Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them".

**(c) Commissioner Of Income-Tax vs Associated Transport Pvt. Ltd.** on 4 January, 1994 Equivalent citations: 1995 212 ITR 417 Cal.

“6. 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.

7. Basically, the Tribunal has come to the decision after a review of the entire facts. The Tribunal does not appear to have failed to consider any relevant material and whether the Tribunal has appreciated the facts correctly or not cannot be gone into in the reference jurisdiction. It is the appraisal of facts by the Tribunal which is the final fact finding body. No question of perversity has been raised.

8. Therefore, questions Nos. 1 and 2 in Matter No. 1865 of 1991 are answered in the affirmative and in favour of the assessee.

9. The question in Matter No. 1863 of 1991 is also answered in the affirmative and in favour of the assessee.

10. There will be no order as to costs.”

(d) Also on the decision of **Hon’ble ITAT, Nagpur Bench in the case of M/s Heera Steel Limited vs ITO (2005) 4 ITJ 437** in which it was held that cash sales cannot be equated with cash credit under section 68.

(e) The AO has made addition by invoking the provision of section 68. The precondition for invoking section 68 is that there has to be credit of amount in the books maintained by the assessee. [**CIT vs P. Mohanakala (2007) 291 ITR 278 (SC)**].

(f) The section is applicable only when a sum is found credited in the books of the assessee [**Rakesh Kalia v. CIT, (2006) 286 ITR 357 (Del.)**]. In the case of assessee neither any sum has been credited in the books of accounts or in the bank account even for a single day throughout the year which is evident from the peak analysis of bank account is submitted here with. As evident from the bank account, sale proceeds realized was deposited in the bank are utilized in the same day for making payments of purchases. The sale proceeds realized was not lying as credit in the books of accounts of the assessee even for a single day. Hence by any stretch of imagination, payments received from the trade debtors cannot be covered within the meaning of credits under section 68.

(g) In the case of "**Dewas Soya Ltd. Vs ITO ITA NO.336/IND/2012**" **HAT Hon'ble ITAT** has also held just because the amounts were received from the buyers in cash, the assessee cannot be penalized because the restriction placed for payment u/s 40A(3) of the Act applies to buyer and not the seller. There being no restriction under the Act to accept cash against sales, the assessee Company cannot be penalized.

(h) **Hon'ble supreme court in the case of CIT v. P. Mohan Kala 291 ITR 278 (SC)** has clearly explain that the primary condition for invocation of section 68 is that there has to credit of amount in the books of the assessee and such credit shall be sum of money emphasis is placed on the physiology used in the section wherein the phrase any sum is found credited has been used and the legislation has not used the word deposited. In other word the balancing effect of the transaction has to be

credit account in the books of accounts which is not the case with the assessee.

(i) In the case of **Rameshwar Meena in CO No. 35/jp/2017 A/o ITA No. 420/Jp/2017 dt. 30.04.2019** this Honble ITAT has held that Given the fact that such bank account maintained with the AxisBank was not reported by the assessee at the time of filing of return of income and the fact that the assessee is engaged in the transportation business and in absence of any contrary findings by the lower authorities regarding any other source of income, such cash deposits are treated as undeclared receipts from the assessee's transportation business and net profit on such undeclared business receipts is directed to be applied. Given that the assessee has declared net profit of 2.39% which has been accepted by us while adjudicating earlier grounds, the same net profit is directed to be applied on such business receipts of Rs 13,55,000. In the result, the assessee's cross objection is partly allowed.

**1.5 Addition u/s 68 is not warranted:** As the ld. AO has made the addition by invoking the provisions of Sec. 68 which is not applicable, because the money found at the business premises is not a credit entries taken from anywhere or from others it is the assessee's self money received from self. And if the ld. AO was of the view that it was the undisclosed or unexplained money then at the worst addition was to be made u/s 69A not u/s 68. The ld. AO one side rejected the books of accounts and other side he made the addition u/s 68 which is not permissible, once the ld. AO himself saying that no books then how on the same books addition can be made u/s 68.

**2. Having huge cash in safe is not new for assessee's business looking to the nature of business and past history:** As we have been already described in our submission that the nature of business of assessee is Bullion Trader. A big portion of sale is done in cash in this business that is why having the huge cash in safe is not unprecedentedly, in support of this

contention we are being produced a detail statement of sales comprises cash sales and cash deposited into bank account year wise;

Finance Year *	Total sales as per audited balance sheet (in lacs)	Cash sales (in lacs)	% of cash sale to total sales	Cash Deposited into bank (in lacs)
2014-15	5772.36	4338.57	75.16%	4367.00*
2015-16	33917.37	13178.91	38.86%	13291.02*
2016-17	18511.09	2709.29	14.64%	2720.94*
2017-18 (up to 15.02.2018)	15349.08	1440.15	9.38%	1383.00

ss Cash:

The above Figures of sales /cash sales /cash deposits into bank are indicating that the cash sales and cash deposit into bank out of cash sales are not new for assessee. These transaction are main part of this business even earlier it was high in compare to present situation. After 'NOTBANDI' and 'GST' the trend of cash sales is getting depressed that is why the ratio of cash sales to total sales is come down and in near future it would go less as compare to present position.

**(3) Double Taxation is Unconstitutional therefore Illegal:** The Ld. AO has grossly erred in law and facts in making addition on account of Undisclosed Income under section 68 of the act, of Rs. 90,00,000/- alleging that Cash as found from Business Premises is unexplainable though it is very much included in the Sales of the assessee of concerned period and profit has been offered for Tax on such amount (Rs. 90,00,000) too and similarly accepted by the Ld. AO during the course of assessment proceedings, **therefore such allegation is evasive, conjecture, surmises and vague in the air, therefore deserve to be deleted.**

It is fundamental rule of taxation that unless provided, same income cannot be taxed twice. In this preposition kindly refer the decision of this Honble Bench in the case of **Sh. AvdeshDangayach V/s ACIT Cir.6 in ITA No. 464/Jp/2016 dt. 23.02.2017** vide page 10. Also Kindly refer **LaxmipatSinghanian v/s CIT 72 ITR 291(SC), CIT v/s M.P. JayaRam 100 Taxman 544(Kar), Gyan Chand Jain v/s ITO 73 TTJ 859(Jd). Gem Palace v/s CIT 168 ITR 543(Raj.), RamanlalMadanLal v/s CIT 116 ITR 657(Cal.), Jain Brothers v/s UOI 77 ITR 107(SC), Further the Honble ITAT in the group case of M/s Gowadia Jewellers in ITA No. 776/Ju/05 at page 8-para 15 dt.30.09.2008** deleted certain additions, mainly on the reasoning that such income was already disclosed in the hands of the working partner and as such same income cannot be brought to tax as undisclosed income of the firm.

By perusal of the assessment order the ld.AO pointed out only one issue that is Cash as found from business premises during the course of Search/Survey proceedings is Unexplained therefore liable to be added U/s 68 of the act, this contention is fully backed with the allegation that Books of Accounts is not correct but simultaneously he relied on same set of books for taking correct Profit figure while it is manifestly proved that such Cash as found from business premises during the course of Search/Survey proceedings have sufficiently entered into such Books of Accounts under the head of Sales and the Net Profit as shown by the assessee in his Income Tax return has been culminated after taking consideration such sales in Financial figures on which assessee has paid the Tax too.

Here it is notable that once Ld. AO presumed such Cash of Rs. 90,00,000/- as Unexplained Income rather than Sales then first he should eliminate such 90,00,000/- from books of accounts and (particularly from Sales account) then calculate the Net Profit otherwise this Rs.90,00,000/- is being added twice one under the head of Sales Account, itself and other as Unexplained Income under section 68 of the act, which is clearly adverse of the Rule of law, which is nurtured through Article 265 of the constitution.

Here it is appreciable that assessee hammering this facts since beginning i.e. Survey/Search Proceedings to till date that whole Cash as Found during the search proceedings is duly entered into Books of Accounts under the head of Sales and whatever Profit calculated in his Income Tax Return it is based on such Sales which includes such Questioned Cash of Rs. 90,00,000/-.

**4. Addition made without corroborative material and without rebutting produced evidences(Wrong Invocation Section 145(3)):** The ld. AO as well as the ld. CIT(A) have grossly erred in law as well as on the facts of the case in making addition of Rs. 90,00,000/- on account of alleged Undisclosed Income U/s 68 alleging that cash found during the course of search/seizure is not backed by valid Books of accounts as it has been rejected, but without bringing any cogent material in support of his contention and without bringing corroborative evidence and without considering the materials and explanations available on records in their true perspective and sense, therefore invocation of Section 145(3) is illegal and such addition should be deleted in toto,

**4.1 Finding of the LD AO:**By invoking the section 145(3) of the Income Tax Act, Ld. AO rejected the Books of Accounts of the assessee and made

the addition of Rs. 90,00,000/-. In support of rejection of Books and Invocation of Section 145(3) he alleged that assessee has faulty billing system and no bills after 19/01/2018 found at the business premises, non-production of the books of accounts at the initial hours of the survey/search and the audit feature of Tally being not enabled.

In the row of allegations the Id. AO pointed out some facts about Books of Accounts as impounded during the course of Search and Seizure proceedings, and stated that assessee deposited Rs.2,00,000/- cash on 29/12/2017 in their AXIS Bank account and since then no cash was deposited in the Banks Accounts of the Assessee neither ICICI Bank nor Dena Bank till 15/02/2018 similarly he indicate about Trial Balance as on 19/01/2018 as seized and impounded on Search date i.e. 15/02/2018 and Tally data in the hard disk and stated that the cash balance as on 19/01/2018 is Rs.13,99,670.78 while on Search Date it was 90,80,291.78, similarly he describe about Sales register and pointed out that during the period from 19/01/2018 to 12/02/2018 the total cash sales has been 3,11,498/- only while on 13/02/2018 and 14/02/2018 the cash sales were Rs. 37,49,299/- and 34,78,403.38 respectively recorded. By describing such comparable figures of Books of Accounts the Ld. AO presumed the Books of Accounts to be tempered and manipulated to match with the cash found during the survey/search. Further he alleged that on the date of survey/search the accountant of the Firm came almost four hours late after repeatedly calling and further alleged that according to the computer expert the lap top of the accountant was in operation during the period.

In this regard we have to submit as under

**(a) Modus Operandi of the Business Operation:** The Assessee engaged in the Trading activities of Bullion and Ornaments and this search year 2017-18 was fourth operating year of the firm. The assessee firm do the business (trading) of Silver/Gold bullion/ornaments on aforementioned addresses. They usually purchased Gold Bar/Silver Bar/Ornaments from Big wholesaler and sell to many small shop keepers/individuals/other like business entities. All Purchases paid by an account payee cheques while most of Sale to small shopkeepers and individuals are in cash and rest in Cheque that is why many time they have to manage a huge cash and daily/periodically deposit into bank account. Similarly being dealt in highly valuable items the assessee completely maintained their Inventory record which are all time updated and it is also appreciable that at the time of Survey and Search proceedings the complete **inventory was updated** and it has been verified by the Search Team also therefore not adverse comments are inserted by the Ld. AO in this regard. It is the choice of businessmen how to run the business and the ld. OA is not supposed to interfere in the same and also no addition should be made on the guess work until there is no documentary evidence in his hands.

**4.2 Faulty Billing System:** The Ld. AO pointed out about faulty billing system but it is also on record that the assessee firm employed part time accountant and he usually comes at shop around in evening and then **Rahul Singhal (the partner)** of the firm describe him about the transaction of the day and then accountant either make entry at shop or he carry all the information of the transaction at his home and next day or whenever he comes to the shop carry such laptop with him along with updated entries **(Facts as described by the Accountant Mahendra Sharma during the**

**statement at Page no. (2) and (6) (PB 277 , 281,282) and confronted by** the both the partners according to their statement as recorded during the course of search and survey proceedings (PB265,697,268,269) )was being counter verified. Simultaneously in support of allegation that faulty billing system the Ld AO could not have been brought on record any such findings or incriminating documents which can prove that assessee has faulty billing system merely not having Invoice copies in hard form for the period from 19/01/2018 to 15/02/2018 does not indicate that billing system in faulty while assessee maintained complete inventory record which is necessary to prove the fairness of billing system. It is manifestly proved that **Ld AO could not bring any adverse finding regarding Inventory of the firm.** It is also on record that assessee firm does not keep printer on shop but at accountants house and reasons behind it is very simple that mostly jewellers are not familiar with the computers and their equipment that is why such work is assigned to the accountant and accountant who do part time accounting usually carry their employers work from shop to his home and finish it in late hours so that he can engage in more works.

**4.3 Reaching late by Accountant at shop:** Similarly reaching late by Accountant at assessee's shop and having operational mode the Computer in that period, does not tantamount that Tally data has been tempered with and manipulated to match with the cash found during the search/survey because the factual position behind getting late by the accountant was well described by him during the course of statement recording as existed at Page No. 10 and 11(PB285-286), similarly it is also manifestly proved that at the initiation Survey i.e. 1.00 PM both the partners were in Shop and sat in front of Investigation team, it is also apposite to mention here that at same time

the investigation team has possessed their Mobiles as well as landline phone also and asking to accountant to come at shop was being done in front of the investigation team by the Partners without letting know about the situation to the accountant therefore it is very well proved that accountant was not aware about the Search proceedings. Secondly without knowing the position inside shop and without knowing the Cash available in Chest of the Shop how he could have been manipulated the Cash books as well as complete books of accounts. It is also notable that any manipulation can be cracked by a prudent person and it is also established that from the date of Search and Seizure i.e. 15/02/2018 to the date of Assessment i.e. 30/12/2019, almost 22.5 months have been elapsed and by investigating and examining through most efficient officers of the Income Tax department despite of having all type of expertise as well as equipment, could not bring any adverse findings from the Books of Accounts which prove that what would have been real position if such so called manipulation could not have been done by the Accountant during the period of Search/Survey as claimed by the Income Tax Department.

5. It is further stated that the correctness of Books of Accounts are basically depend upon some core transactions which are **Opening Stock, Purchases, Sales and Closing stock** if any part of such transaction get tempered than books of accounts said to have been tempered. Here in given case all the four legs are intact of Books of Accounts of the Assesse and this facts well established since Survey/Search proceedings till the date of Assessment proceedings that is why the Ld. AO as well as Investigation team does not pointed out any of transactions out of four to be questioned except some presumptions which are purely vague in the air and said to have been

surmises and conjecture. In support of their allegation they pointed out some irregularities i.e. Not having some Sales invoices in hard form, major sales were made to have been happened only on two days i.e. 13/02/2018 and 14/02/2018, Not depositing Cash in Bank since 29/12/2017 and having huge cash balance of Rs. 13,99,670.00 as on 19/01/2018, these irregularities are not an indication of manipulation even they does not give any sense of having unexplained money as alleged by the Ld. AO.

**The Honble Raj.High Court in the case of Malani Ramjivan Jagannath vs. ACIT 316 ITR 120(Raj.)it has been held that***In each trading account, only four entries were there of opening stock, purchase on debit side, sales and closing stock on credit side. The quantum and value of purchases and sales had not been in dispute inasmuch as they were held to be fully vouched. Value of opening stock also cannot be disputed as it came from closing stock of previous year. The inventories of closing stock was also not found to be incorrect. That is to say actual stock position was not in dispute. The previous year's books of account were not found to be incorrect. In the face of these undisputed facts and circumstances, the Tribunal could not have interfered with the order of CIT(A). In doing so, it had ignored all admitted facts in the face of which there was no occasion for the AO to have resorted to estimate method. There being no dispute about the sales and purchases, non-maintenance of stock register lost its significance so far as arriving at GP is concerned. Therefore, the CIT(A) was right in his reasoning about admitted state of affairs. Resorting to estimate of GP rate was founded on no material. Mere deviation in GP rate cannot be a ground for rejecting books of account and entering realm of estimate and guesswork. Lower GP rate shown in the books of account during current year and fall in GP rate was justified and also admitted by the AO as well as CIT(A) as well as the Tribunal. Therefore, fall in GP rate lost its significance. Having accepted the reason for fall in GP rate, namely, stiff competition in market and also that huge loss caused in particular transaction, neither the rejection of books of account was justified nor resort to substitution of estimated GP by rule of thumb merely for making certain additions. Therefore, the findings arrived at by the Tribunal suffers from basic defect of not applying its mind to the existing material which were relevant and went to the root of the matter. When all the data and entries*

*made in the trading account were not found to be incorrect in any manner, there could not have been any other result except what has been shown by the assessee in the books of accounts. Therefore, the order of the Tribunal cannot be sustained*

**6.1**If Ld.AO are taking the help of aforementioned allegation in support of making a huge addition then he should have been brought on record some corroborative material which could demonstrate that what would have been real picture if such allegedly tempering or manipulation could not have been done by the accountant.

**6.2**By perusal of the assessment order the Ld. AO does not speak about any corroborative material in support of their allegation but mechanically act while for cracking the complete verifiable books of accounts of the assessee he had to bring some more cogent material in support of his allegation but nothing was there which could establish that something was wrongly happened with the books of accounts except finding such huge cash which were also pre-arranged systematically to be depositing in Bank, and this is the factual position which is being demonstrated by the whole narrated story of the Survey/Search.

**6.3**The Assessee is a law abiding person and do their business within the limitation as provided by the legislature therefore what he could do in following law of land, he did. He is registered with Income Tax Department filling their Income Tax Return continuously and regularly after getting audited their Books of Accounts from Qualified Chartered Accountants and paid the Tax as due. Similarly Registered under VAT/GST and filling their monthly as well as Annual returns after depositing due Tax. It is also apposite mention here that whatever transactions are being shown by the books of accounts of the assessee have been submitted GST department also and the complete GST Returns also have been submitted before Ld. AO as well as Investigation team for their verification and it is also appreciable that GST department has accepted such Sales and Purchase Transaction in same

manner without making any adverse comments. Therefore it is also thinkable that if one Central Government Revenue department accepts the results of Books of Accounts as shown by the assessee how other can reject without pointing out any cogent mistake on record or without bringing any corroborative material on record. The Id. CIT(A) stated that taking such cash sale figures in GST does not make an evidence for genuineness merely filing return under GST would not be a shield or safeguard for the appellant. The observation of the Id. CIT(A) is not a far because he is doubted the other Govt. Agencies which is also equal to income tax. And in these days are so many penal provision in the GST on wrong sales/purchase, hence the same cannot be ignored.

Commercial Tax Dept., or GST were directly concerned with the collection of tax on sales and hence, the with correctness thereof. The sales, having accepted by them, there was no reason to make a further enhancement in the declared sales **Kindly refer Shree Shankar Khandsari Sugar Mills v. CIT 193 ITR 669 (Kar)**. More particularly, when no evidence of suppression of sale is found nor alleged so.

**6.4 We further** submit, that the cash in hand is supported with the cash book, sales book, purchase book, inventory register and ledgers which are duly maintained during the course of day to day business transaction, which also duly audited by the qualified chartered accountant.

**6.5 Cash is maintained on daily/periodic basis** and supported with the sufficient evidences which were duly verified/checked during the course of search proceedings we produced before the lower authorities a complete set of Cash book from 01.04.2017 to 15.02.2018 for **their kind consideration (PB 110-116) (Annexure '15')**.

**6.6 The cash balance as shown on 15.02.2018 was 90,80,291/- in said Cash Book against cash in hand Rs. 90,67000 (approx.) as found by Income Tax Department during the search which is quite nearest to cash book balance. The cash as retained with the assessee during the search**

time was ready to deposit into bank account that is why all cash have been arranged systematically.

**6.7 The cash was generated through Cash Sales as made during the course of day to day business transaction supported with the availability of inventory can be verified with the inventory record.**

**6.8 The cash** as retained by the assessee at the time of survey/search was quite reasonable looking to the turnover of the company since its incorporation which are as follows;

Financial year	Amount
2014-15	57,72,36,672.47
2015-16	3,39,17,37,660.61
2016-17	1,85,11,09,918.64
2017-18	1,67,39,42,279.68

**7. Inventory Register:7.1**It is further submitted that the inventory register is being maintained during the course of day to day business transaction and fully supported by valid Purchase Bills. By perusing the Stock Register it is revealed that Quantitative details of all the items are being maintained on day to day basis, and the movement of Inventory describes that at the time of outward of Inventory sufficient balance was there and such balance was built up through valid Purchases which's payments have been made through Account Payee cheques and it is also appreciable that no sundry creditors balance were laying pending as on 15/02/2018 which can give a second thought that to generate Inventory fake purchase bills would have been arranged but this possibility also get turned down by revealing

that all purchases were made through valid Bills up to 13/02/2018 and there payments have been made through account payee cheque up to that date. And also not doubted by the lower authority.

7.2 Simultaneously during the course of Search proceedings the **Investigation Team found the Inventory 'NIL'** which clearly depicted through Inventory record also. Therefore complete matrix of Opening Stock, Purchases, Sales and Closing Stock describe that there is no any incriminating documents could brought on record nor found by the Investigation as well as Assessing Authority which can prove that such Cash founded during the course of Search Proceedings in totalling of Rs. 90,67,000/- out of Books of Accounts as described as above and submitted before the Income Tax Department viz. at Search Proceedings, post search proceedings as well as Assessment proceedings.

**A summary of Inventory for the period from 01/02/2018 to 15/02/2018 is being presented for your kind consideration which is part of Books of accounts.**

### **BALAJI JEWELLERS**

G-5, Siddhi Vinayak Complex Maniram Ji

Ki Kothi Haldiyan Ka Rasta Jaipur-302003

### **Stock Summary**

1-Feb-2018 to 15-Feb-2018

Particulars	Opening Balance			Quantity	Inwards		Quantity	Outwards		Closing Balance	
	Quantity	Rate	Value		Rate	Value		Quantity	Rate	Value	Quantity
Gold Bar 99.50%	72.456 grms	2,883.25	2,08,908.61	6,004.400 grms	3,019.85	1,81,32,621.00	6,076.936 grms	3,020.59	1,83,55,901.97		

## BALAJI JEWELLERS VS ACIT, CENTRAL CIRCLE-4, JAIPUR

GOLDJEWELLERY2XT	5.730grms	2,669.17	15,294.34	9,626.20grms	2,857.30	2,75,05,126.58	9,62,010grms	2,858.26	2,75,30,768.91
Silver	313.134kg	38,521.84	1,20,62,497.65	868.772kg	38,507.02	3,34,53,821.68	1,181.906kg	38,385.08	4,53,67,558.83
SilverCoins				1,200.000grms	45.00	54,000.00	1,200.000grms	48.00	57,600.00
<b>Grand Total</b>		<b>1,22,86,700.60</b>		<b>7,91,45,569.26</b>			<b>9,13,11,829.71</b>		

By perusing aforementioned inventory record it is also cleared that during the period from 01/02/2018 to 15/02/2018 the assessee appellant made total Sales for Rs. 9,13,11,829.71 which clearly indicate that Cash as generated though cash sales as claimed by the assessee of Rs. 90,67,000/- is very meagre part of total sales i.e about 10% and rest of claimed sales are belonged through Account payee cheques which indicate that such Cash transaction as not an unfortunate while part of day to day business transaction. For more detailing we filled a **copy of Inventory Register(Annexure '16')(PB117-122)** before the lower authorities.

**8. Purchase Register:**The Purchase Register is being maintained during the course of day to day business transaction and fully supported by valid Purchase Bills. Some Copy of **Purchase bills (as Annexure '17' PB 123-146) and Purchase Register (as Annexure '18'PB147-152)**were also filed.

**9. Sales Register:**The Sales Register is being maintained during the course of day to day business transaction and fully supported with inventory as available at the time of sales. A **copy of Sales Register(Annexure '19'PB153-196)** is being attached for your kind verification.

**10. Having huge cash in safe is not new for assessee's business**

**looking to the nature of business and past history:** As we have been already described in our submission that the nature of business of assessee is Bullion Trader. A big portion of sale is done in cash in this business that is why having the huge cash in safe is not unprecedentedly, in support of this contention we are being produced a detail statement of sales comprises cash sales and cash deposited into bank account year wise:

<b>Finance Year *E</b>	<b>Total sales as per audited balance sheet (in lacs)</b>	<b>Cash sales (in lacs)</b>	<b>% of cash sale to total sales</b>	<b>Cash Deposited into bank (in lacs)</b>
2014-15	5772.36	4338.57	75.16%	4367.00*
2015-16	33917.37	13178.91	38.86%	13291.02*
2016-17	18511.09	2709.29	14.64%	2720.94*
2017-18(up to 15.02.2018)	15349.08	1440.15	9.38%	1383.00

**Excess Cash\* Deposited in compare to cash sales represented cash deposit included Cash sales, opening cash at the beginning of the year and some cash withdrawn during the year which were deposited again.**

**10.1**The above Figures of sales /cash sales /cash deposits into bank are indicating that the cash sales and cash deposit into bank out of cash sales are not new for assessee. These transaction are main part of this business even earlier it was high in compare to present situation and both the lower authorities have ignored these vital facts. After 'NOTBANDI' and 'GST' the trend of cash sales is getting depressed that is why the ratio of cash sales to total sales is come down and in near future it would go less as compare to present position.

**10.2** Apart of the above statement we are producing here some annexure which are part of books of account of the assessee shows the incidents of depositing of cash into bank in a day. By these statements it observed that it is in practice of the assessee to depositing the huge cash into bank even many instances shows he deposited more than 1.00 crore in a day into bank account that is why this seized cash Rs. 90,67,000/- is not much for assessee by looking to the past incidents and nature of the business of the assessee, annexed as **Annexure-20**. By perusing such Annexure it is very much clear that depositing huge cash on daily basis in Bank Account is not new incidence for the assessee firm similarly it is also revealed that in some months single penny was not deposited in Bank hence observation from Ld. AO that since 29/12/2017 assessee did not deposit any Cash in Bank Account quite covered in the precedent able incidences such sustain the contention of the assessee.

**11. Structure of financial statement:** Structure of financial statement is also support the contention of the assessee that the cash as found in the safe of the assessee is part of business assets and generated during day to day business transaction as converting inventory into cash by selling that is why inventory get nil (verified by survey team at the time of survey/search).

**11.2 We produced a statement of balance sheet of the assessee's business for last three year and current year up to date of survey (i.e. 14.02.2018).** By looking to the financial statement (specially balance sheet) of the assessee it is observed that the involvement of fund into business is around 1.80 crore. Total fund is busy in major two type of assets viz. Cash/Bank and inventory/debtors. If cash and bank is less, then stock and

net of receivables retain all fund and vice versa. Means the structure of balance sheet comprises capital/unsecured loan/current liabilities and cash/bank/inventory/debtors/other assets. All head work in a reciprocal manner means if one head down the fund is converted into other head like happened on 15.02.2018 (date of search) here on just before one or two days all inventory had converted into cash/bank which is clearly evidenced with the money as found in safe, inventory as found NIL, Books of account as found at same premises described all the transaction that how it is done.

**Figures in Lacs**

<b>Particulars</b>	<b>2014-15 (Audited)</b>	<b>2015-16 (Audited)</b>	<b>2016-17 (Audited)</b>	<b>2017-18 (up to 14.02.2018) (as impounded during search from business premises)</b>
<b>Liabilities</b>				
Capital	38.62	72.95	101.46	100.06
Profit				15.37
Unsecured Loans	127.65	86.65	84.65	63.40
Current Liabilities	9.76	.19	.66	.96
<b>Total</b>	<b>176.03</b>	<b>159.79</b>	<b>186.77</b>	<b>179.79</b>
<b>Assets</b>				
Fixed Assets	2.48	2.29	1.95	2.41
Closing Stock	89.76	104.21	111.00	0
Debtors	2.00	12.05	0	79.96
Cash in hand	10.68	8.14	7.70	90.80
Bank Balance	70.44	32.63	64.70	5.31
Loans and advances	.66	.47	1.42	1.31
<b>Total</b>	<b>176.03</b>	<b>159.79</b>	<b>186.77</b>	<b>179.79</b>

**11.3** It is hereby submitted the above Facts have been duly verified by the survey/search team during survey as well as assessment proceedings by Ld. AO

**11.4** Cash as founded in safe of the assessee's business premises during the survey is fully disclosed and explained in books of accounts including cash book as maintained during day to day business transaction also impounded by the income tax department and kept in soft copy with them (copy of cash book was submitted before lower authorities PB110-117).

**11.5** Referred Cash which was founded during survey is generated through sales of jewelry as fully supported by valid sales bill by charging/collecting GST and also part of books of accounts as impounded by the income tax department during search and kept with them in soft copy, Copy of sales register was submitted before lower authorities PB153-196). On perusal of the sales registered it is revealed that all the details minutely have been mentioned. If the ld. AO was having any doubt he could have made in depended inquiry but he has failed to do so.

**11.6** The inventory, as sold out and was the main cause for generating cash has generated during day to day business transaction, as purchasing in normal business course from valid suppliers and supported with the valid purchase bill bearing GST Number and paying the GST to the suppliers which was dully deposited by the supplier into government account in due course. All Purchase bills were presented during the survey time as well as before Ld. AO, **the payment of all the purchase bill were made before survey through an account payee cheque and cleared from bank before**

**survey which was duly accounted for in the books of account as maintained during day to day business transaction** which was verified by the survey team during survey/search as well as by Ld. AO also and purchase register is also part of books of account as impounded during search by the income tax department and kept them in soft copy (Copy of purchase register and copy of purchase bills are being submitted before your honor for your kind consideration).

**12.** It is also appreciable that during the course of Survey/Search proceedings the Investigation Team has taken a soft copy of the books of Accounts of the assessee appellant for want of further investigation and examination, later on, on dated 16/02/2018 the assessee appellant has submitted a detail submission along with complete books of accounts in hard copy viz Cash Book up to 15/02/2018 (Search date) as **Annexure-1** of that submission, Inventory Book as **Annexure-2**, Purchase Bills and Purchase Register as **Annexure-3** and 4 and Sales Register as **Annexure-4** by describing the overhaul position of Trading Account and by giving the sense that the soft copy of books of accounts as taken by the Survey/Search team during the course of search proceedings was quite perfect and providing true and fair picture of the business and can be verified with the Hard copy of books of accounts as during the course of Survey/Search it could not have been possible provide them such hard copy due to not having any printing facility at the shop. Copy of such letter is being attached as **Annexure-21PB 199-203**.

**13.** It is also apposite to mention here that after conducting such Search proceedings the assessee appellant had tried to get convince

Investigation Wing by providing all type of information and offer to assist to reach any logical conclusion and in this row we are producing copies of such submission (**As Annexure-22PB204-206**) as submitted before Investigation Wing for releasing the Seized Cash because this Cash was the life line of the assessee business and without having such huge cash finally the business of assessee got collapsed and they had to close it.

**14. Other facts in support of cash founded in safe during the survey/search, which have been not considered honestly:**

**14.1 GST Department has accepted such Sales of Rs.90,00,000 too without raising any Question;**

As we have already submitted that the assessee is registered under various laws which are as follows; (a) **GST earlier under V.** The items in which assessee trades are liable to taxable under Good and Service Tax, earlier it was Value added Tax. Since incorporation of firm, assessee is depositing the VAT and thereafter GST and filling respective returns in due course without getting late even the assessee has deposited his latest return then for the month of February, 2018 in due time by showing the all transaction in the month of February which were described in here above. Copy of all Sales Tax Return viz. VAT and GST are attached as **Annexure '23 'PB215-237**).

The assessee is auditable hence gets its account audited since its inception and paying the Income Tax on Net Profit and filling their Income Tax Return timely and properly. Copies of ITR since inception are attached (PB238-254)

**14.2** It is also notable that Ld. AO's observation regarding Cash as founded during the Search is not tenable on many grounds because Ld. AO could not provide the satisfactory observation about Inventory position which is very import to rebut assesse's contention, if for a while we follow the contention of the Ld. AO than we are not able to provide an amicable reply regarding Inventory position because inventory position is NIL at the time of Search and same position is being depicted by the Inventory record as impounded by the Income Tax department. We would like to submit that if the cash was not from the sale then there should be stocks to that extent, and the ld. AO has failed to state where the stock has gone. These facts support our case and against the case of the lower authorities.

In this regard we placed our reliance on Jurisdictional High Court order in the matter of **CIT Vs. M/s Ceramic Industries and M/s Ceramic Tableware (P) Ltd. ITA No. 117/2008, 65/2009,44 and 56 of 2010, 83/2011,63 and 65 of 2014, 124,135 and 198 of 2016 dated 25/05/2017.**Where it has been held

“We agree with the arguments of the ld. AR that the main objection raised by the AO was that input/output ratio in various months has the inconsistency which has been duly explained by the assessee vide letter dated 26.03.2004 and the second objection by the AO was that the sister concern M/s. Bharat Potteries Ltd. has declared more yield and more gross profit, has also been explained by the assessee vide the same letter dated 26.03.2004. Therefore, the inconsistency in the input/out ratio in various months the reasons for which has been explained by the assessee, cannot be the basis for rejection of books of account. The yield and gross profit rate

declared by the assessee can also not be the basis for rejection of books of account since M/s. Bharat Potteries Ltd. is manufacturing maximum of stoneware crockery and for many other reasons which were explained by the assessee vide its letter dated 26.03.04 which was ignored by the AO and the AO has not pointed out any specific defects in the purchases, sales, opening stock and closing stock of the assessee and **the AO has not brought on record any cogent material to prove that the assessee has sold the under-production out of the books of account.** Therefore, in such circumstances and facts of the case, the AO is not justified in rejecting the books of account by invoking Provisions of Section 145(3) of the Act and the additions made by the AO are liable to be deleted. The objection of the Id. DR that the Id. CIT(A) has not relied upon the CGCRI Report, Calcutta, the Id. AR has pointed out that in the same report it has been mentioned that the said organization is not involved in production practice and they are not sure to what extent their opinion will be useful for the purpose of the assessee and in such circumstances and facts of the case, the report of CGCRI, Calcutta alone cannot be the basis for rejection of books of account and making an estimation of wastage and the Id. CIT(A) was not justified in ignoring other material which was placed before him as mentioned hereinbefore. Therefore, the Id. CIT(A) was not justified in sustaining the applicability of Section 145(3) of the Act and addition of Rs. 11,15,087/-. Thus Ground No.1 of the assessee is allowed and the solitary ground of the Revenue is dismissed.”

**15. Addition made without bringing any cogent material on record;**

It is ample cleared that the cash as founded during the course of Search/Seizer proceedings for Rs. 90,00,000/- are belonged to Sales as recorded in the books of accounts as produced before investigation team the then and thereafter many other authorities in due course in soft copy as well as hard copy. It is also manifestly proved that such Cash Sales are squarely stands upon all the legs viz. Opening and Closing Stock, Purchase and Sales along with Quantitative details and this facts has been examined and verified by the Income Tax Department and no defects were found in such factual position since Search to till date except some minor and baseless allegations which have been sufficiently replied through aforementioned submissions.

Simultaneously Ld. AO could not bring any cogent material in support of his allegation that such founded Cash of Rs. 90,00,000/- is Unexplained Income. It is very settled position of law that any contrary view as is being taken by the Assessing authority as well as assessee should bring some corroborative material on record through which it can be proved,

**(a)** In similar matter Honourable Supreme court has propounded in the matter of; **Commissioner Of Income-Tax, ...vs Devi Prasad Vishwanath Prasad** on 1 August, 1968 Equivalent citations: 1969 72 ITR 194 SC

“9. The High Court, in disposing of the application under section 66(2), expressed the view that because the amount of Rs. 20,000 was entered in the books of account of the business, there was some material to hold that the amount was income of the assessee from the business and not from some other source. But it was not open to the High Court to direct the Tribunal to state a case on a question which was never raised before or decided by the Tribunal at the hearing of

the appeal. The question again assumes that it was for the Income-tax Officer to indicate the source of the income before the income could be held taxable and unless he did so, the assessee was entitled to succeed. **That is not, in our judgment,** the correct legal position. Where there is an explained cash credit, it is open to the Income-tax Officer to hold that it is income of the assessee and no further burden lies on the Income-tax Officer to show that that income is from any particular source. It is for the assessee to prove that even if the cash credit represents income it is income from a source which has already been taxed.

10. We discharge the order recorded by the High Court and allow the appeal. We decline to answer the question did not arise out of the order of the Tribunal. The assessee will pay the costs of the Commissioner in this court and in the High Court.”

**(b)** Similarly the presumption as presumed by the Ld. AO regarding Cash of Rs. 90,00,000/- is purely vague in the air and without having any evidence should not be sustainable and well supported by the landmark judgment in the matter of **CIT vs ShriKulwantRaion 13 February, 2007 Equivalent citations: 2007 291 ITR 36 Delhi**

“16. This cash flow statement furnished by the assessed was rejected by the Assessing Officer which is on the basis of suspicion that the assessed must have spent the amount for some other purposes. The orders of Assessing Officer as well as Commissioner of Income Tax are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessed, a sum of Rs. 10,000/- was being spent for household expenses every month and the assessed has withdrawn from bank a sum of Rs. 2 lacs on 4th December, 2000 and there was no material

with the Department that this money was not available with the assessed. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessed are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or Commissioner Income Tax(A) to support their view that the entire cash withdrawals must have been spent by the assessed and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under Section 158BC of the Act and the same was rightly ordered to be deleted. 17. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

18. Accordingly, the present appeal is, hereby, dismissed.”

**(c) In the matter of Dr.PrabhuDayalYadavVs. CIT reported(2018)**

**89 taxmann.com126 (Allahabad) has held;**

“9. Having considered the arguments so advanced by learned counsel for the parties, we find that in the peculiar facts of this case, the assessee had been subjected to a survey wherein the OPD register as also Indoor Patient register had been found to have been maintained and entries of receipts of money from different patients were found recorded therein. Then as to the alleged discrepancy, the allegation made in the assessment order is wholly vague inasmuch as the assessing officer has not recorded the nature and extent of discrepancy, if any noticed between entries found recorded in various books of account produced by the assessee during the course of the

survey and assessment proceedings. Besides the above the assessee had also produced his cash book, ledger as also bank pass book. No specific discrepancy or deficiency has been pointed out in the assessment order on account of other books of account.

Thus, it appears that the books of account of the assessee have been rejected merely because the assessee did not produce the vouchers. Though, such vouchers may have been maintained, however, in the entirety of the facts found in this case the assessee had maintained his accounts and recorded his professional receipts therein. No evidence exists to doubt the correctness or completeness of the books of account of the assessee. In the instant case, books of account of the assessee were rejected unfounded suspicion. Absence of vouchers, in the peculiar facts of this case did not give rise to any presumption that there was any non-disclosure of income inasmuch as there is no evidence to doubt the correctness of the entries made in the OPD register as also Indoor Patient register.

Also, by an earlier order in this appeal a supplementary affidavit had been called for to bring on record the status of the past and later assessment order in the case of the assessee. In pursuance thereto the assessee has filed a supplementary affidavit wherein the income earned from different assessment year and assessment has been disclosed as below:—

<i>Asst.</i>	<i>Income from profession as</i>	<i>Remarks, if any</i>
<i>Year</i>	<i>per return</i>	
2002-03	1,95,150	Assessed u/s. 143(1)

2003-04	2,34,540	Year under appeal u/s. 260A before this Hon'ble High Court
2004-05	2,24,820	Assessed u/s. 143(1)
2005-06	1,89,000	Assessed u/s. 143(1)
2006-07	2,51,346	Assessed u/s. 143(1)
2007-08	2,07,702	Assessed u/s. 143(1)
2008-09	2,64,311	Assessed u/s. 143(3) by ITO, W-II, Azamgarh dated 31.12.2009.

**10.** A bare perusal of the aforesaid chart indicates that for the A.Y. 2008-09 the assessee had been assessed under Section 143(3) of the Act at a total income of Rs. 2,84,371/-. In that assessment the books of account of the assessee were also accepted. It clearly appears that the income disclosed by the assessee in the present year is similar or comparable to the income which the department assessed at the hands of the assessee five years later. This fact itself indicates that the rejection of books of account and the consequential best judgment assessment made by the assessing officer in the present year is wholly excessive, arbitrary and unfounded.

**11.** In view of the above, we answer question no.1 in favour of the assessee and against the revenue. We have found that the rejection of books of account of the assessee was unfounded. Consequently the estimation and enhancement of income that followed also cannot be sustained. Question no.4 thus does not require to be answered. Accordingly, the appeal is allowed. No order as to costs.”

**(d)** In the matter of **PCIT-3 Vs. Swapnanda Properties Pvt Ltd.** Reported on [2019] 111 taxmann.com 94 (Bombay) has held;

“11.We note that the books of accounts of the Respondent were rejected by the CIT (A) under section 145(3) of the Act. However, the Tribunal found in the impugned order that the invocation of section 145(3) of the Act is unjustified as no defect was noted in the books of accounts to disregard the same. We note that CIT (A) in his order while rejecting the Books of Account does not specify the defect in the record.

The basis of the rejection appears to be best judgment of assessment done by him. The rejection of books should precede the best judgment assessment. On facts, the Revenue has not been able to show any defect in the Respondent's records which would warrant rejection of books and making a Best Judgment Assessment. Thus, on facts the view taken by the Tribunal is possible view. Therefore, no substantial question of law arises. Thus not entertained.”

**(e) In the matter of CIT Vs. Pinkcity Developers reported on (2017) 398 ITR153 (Rajasthan)/(2018)99 Taxmann.com 422 (Rajasthan) has held;**

“7.The counsel for the respondent contended that the Tribunal while considering the objection of section 145(3) of the Income-tax Act has rightly observed as under:

"(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144."

8. Taking into considerations, the overall facts and circumstances of the case, we are of the opinion that the Tribunal while confirming the order passed by the Commissioner of Income-tax (Appeals) has not committed any error, therefore, the issue is answered in favour of the assessee and against the Department.

The appeal stands dismissed.”

**(f) R.B. JessaramFatehchandSugar ... vsCIT , ... on 30 March, 1969**  
Equivalent citations: 1970 75 ITR 33 Bom

“4. In our opinion, the assessee's account books are to be accepted, unless, on verification, they disclosed any faults or defects, which cannot be reasonably and satisfactorily explained by the assessee. All the other transactions, except the cash transaction, which were verifiable, have been verified and scrutinised by the Income-tax Officer and there is nothing wrong whatsoever found with them. As to

the cash transactions also, the quantity of sugar sold has not been disputed. The rates at which sugar was sold were not such as would excite suspicion by reason of being lower than the prevailing market rates. The names of the customers are also entered in respect of the transaction. All that is not done is that the addresses are not entered and on enquiry the assessee was unable to supply the addresses. Since, having regard to the nature of the transaction and the manner in which they had been effected, there was no necessity whatsoever for the assessee to have maintained the addresses of cash customers, the failure to maintain the same or to supply them as and when called for cannot be regarded as a circumstance giving rise to a suspicion with regard to the genuineness of the transactions. The Tribunal, therefore, was not right, in our opinion, in setting aside the order of the Appellate Assistant Commissioner and restoring that of the Income-tax Officer. There are no circumstances disclosed in the case nor is there any evidence or material on record which would justify the rejection of the book results.

5. In the results, therefore, our answers to the questions are as follows : Question No. 1. - No. Question No. 2. - Yes. Question No. 3. - Yes.

6. The Commissioner will pay the costs of the assessee.”

**(g) In Dhakeswari Cotton Mills Ltd v. Commissioner of Income Tax** (1954) 26 ITR 775, may be referred to, in which held:

“In making an assessment under Section 23(3) of the Indian Income tax Act, the Income-tax Officer is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a court of law, but the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under Section 23(3). The rule of law on this subject has been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh v. Commissioner of Income-Tax, Punjab

(1944) 12 I.T.R. 393”

**16. Once Books is rejected only Estimation of Income can be done:**The Ld. AO has grossly erred in making assessment by adding Rs. 90,00,000/- in his total income arbitrarily resultant Net Profit Ratio has been stretched up to 54.37% in compare to .0060% as declared *suomotu* in capricious manner based on perverse findings liable to be deleted,

**16.1** Similarly once books of accounts is rejected and Ld. AO does not believe on Books of accounts of the assessee then major concern of assessing authority is only to make fair income on the basis of available record and past history of the assessee, here in this case one side Ld. AO accepted books result and for calculating total income taking the Net Profit what Assesse has declared through their Books of Accounts and other side making a separate Addition of Rs. 90,00,000/- by taking the view that Books of accounts is rejected, this dual approach certainly create a chaos and true and fair income could not have been deduced henceforth purpose of assessment proceedings is being defeated.

This approach is not sustainable under the law as well as under many judicial pronouncements as being contradictory approach of the ld. AO.

**16.2** Further it is also notable that since incorporation of the assessee firm i.e. AY 2015-16 each and every Financial Statement as followed by Income tax return for that particular year have been accepted by the Income Tax Department without disturbing their results which shows the method of accounting of the assessee firm

consistently following without disturbing anything, we are being tabularized such details as follows;

**NET PROFIT RATIO CHART FOR SINCE INCEPTION**

AY	Returned Income	Turnover	Ratio of NP to Turnover	Assessed	Remarks
2015-16	107880/-	577236872/-	.0186%	143(1)	Returned Income accepted
2016-17	783060/-	3391737660/-	.0230%	143(1)	Returned Income accepted
2017-18	299760/-	1851109918/-	.0161%	143(1)	Returned Income accepted
2018-19	101880/-	1673942279/-	.0060% After making Addition of Rs. 90.00 Lac addition it comes 54.37%	143(3)/153 A	Addition made of Rs. 90,00,000/-

**16.3**By perusing the assessment order it is revealed that during the year under consideration the Ld. AO did not disturb the Net Profit as deduced by the books of Accounts as followed by Audited Financial statement but making adjustments on the basis of Cash as found at premises of the assessee and duly recorded in the Books of Accounts therefore this act of the Ld. AO is highly objectionable and many questions are left unanswered which are mainly what would be Sales as recorded in the books of account for Rs. 90,00,000/- and similarly what would be of Inventory as recorded in support of such Cash of Rs. 90,00,000/-. If we follow the

tion of the Ld. AO then many figures will have to be fixed on revers angle sales would be reduced by Rs. 90,00,000/- resulted Net Profit would have inverted into Loss by Rs. 90,00,000/- and ultimately total income comes being shown by the assessee in their Return.

**16.4** It is settled law that once Books of Accounts is rejected after applying Section 145(3) then only Fair Income may be estimated which should be based on past results if available, in this matter assessee has a long past history which are undisputable therefore in view of past history estimated profit should be calculated by applying a suitable Net Profit Ratio.

Many landmark judgements are supporting this contention as follows;

**(a)** In the matter of **CIT Vs. Sita Ram Sopra reported** at (2017) 399 ITR 463 (Rajasthan)/(2018)99 taxmann.com420 (Rajasthan) has held;

**“6.1** The same was confirmed by the Tribunal with the reasoning as under :“We have heard the rival contentions and perused the facts of the case. The assessee is not maintaining the day-to-day stock register and specific defects were also pointed out by the Assessing Officer in the books of account. In such circumstances and facts of the case, we find no infirmity in the order of the learned Commissioner of Income-tax (Appeals) who has rightly confirmed the application of section 145(3) of the Act. As regards estimation of income, the learned Commissioner of Income-tax (Appeals) has rightly directed the Assessing Officer to apply the gross profit rate of 11.5 per cent. on the basis of the past history of the assessee.”

We are in complete agreement with the view taken by the Tribunal.

**7.** In that view of the matter, the issue is answered in favour of the assessee and against the Department.

The appeal stands dismissed.”

(b) In the matter of **Malpani House of Stones Vs. CIT** reported on (2017)88 Taxmann.com 546 (Rajasthan) has held;

“9. We have heard counsel for the appellant and the counsel for the respondent.

10. In view of the well settled principle of law that when income is estimated and while assessing the same and rejecting the books of accounts, it would not be appropriate to rely on the books of accounts for any addition other than estimate made by A.O.

11. In that view of the matter, the contention raised by the appellant deserves to be accepted. The income which has been added on the basis of books of accounts having been rejected and in that view of the matter, addition of Rs.13,740/-requires to be deleted.

12. The appeal is allowed. The question is answered in favour of the assessee and against the Department.”

**In the case of Satish Chand Agarwalvs. ITO (2018) 52 CCH 0587 JaipurTrib(2018) 64 ITR (Trib) 0713 (Jaipur) IT HAS BEEN HELD**  
*The assessee has not disclosed these amounts in the return of income and retracted from statement. In such a situation, it is the duty of the Assessing Officer to investigate the issues further and establish on each and every issue on which the surrender was made to establish the correctness of undisclosed amount by making further enquiries. The A.O. has failed to do so. He has simply made the addition on the basis of statement made during the survey which assessee had not honoured. Section 133A, however, enables the income tax authority only to record any statement of any person which may be useful, but does not authorize taking any sworn statement. Thus, it is trite law that Section 133A does not empower any Income tax authority to examine any person on oath and then use it as evidence to make addition. In such a situation, no addition can be made or sustained only on the basis of the statement recorded during the survey u/s 133A of the Act. Once the assessee has retracted from the statement then it was on the A.O. to establish beyond any doubt the issues on which the addition has been made. Once the assessee has submitted up to date cash book and stock register then it was duty of the*

*Assessing Officer to pin point the defects in such books of account particularly with regard to the issues, on which the statement was recorded during the survey. Further in the case of ShriPawan Kumar, even the Assessing Officer recorded his statement but he has not asked any question with regard to amount of advance of Rs. 10.00 lacs for which the addition has been made only on the basis of a piece of paper, which was not signed by ShriPawan Kumar. Similarly in the case of debtors, once the assessee has retracted then it was the duty of the Assessing Officer to examine these debtors to establish the truthfulness of the debt. Considering all these aspects, tribunal find no merit in sustaining the addition only based on the statement recorded during the course of survey. Hence grounds No. 1 to 5 of the appeal are allowed.*

### **17. Affidavit ignored without rebutted;**

**The Ld. AO** has grossly erred in law as well as on facts of the case in making an addition of **Rs. 90,00,000/-** without considering the affidavit as produced by the assessee during the course of assessment proceedings in support of his contention, therefore averments contained in duly sworn affidavit are to be accepted as correct unless the same are rebutted by the evidence. Kindly refer **Mehta Pareek & Co. 30 ITR 181 (SC)** ,, **ITO v. Dr. Tejgopal Bhatnagar 20 TW 368 (Jp)** **Paras Cotton Company vs. CIT (2003) 30 TW 168 (JD)**., **CIT v/s Lunard Dimond Ltd. 281 ITR 1 (Del)**. Recently in **CIT v/s Bhawani Oil Mills (P) Ltd 239 CTR 445/49 DTR 212(Raj)**.- It has been held that contents of affidavit could not be treated as of a lesser importance than the statement given by the creditor before the AO.

**Through Affidavit as submitted before Ld. AO during the course of Assessment Proceedings it was stated under Point No. 8.....**

**“That our all transaction are duly accounted for in the books of accounts as is being maintained during day to day business transaction and fully reliable and got audited and submitted before your good self of examination.”**

**18. No show Cause No Addition (Violation of principle of natural justice):** The Ld. AO has grossly erred in law as well as on facts of the case in making addition of **Rs. 90,00,000/-** without issuing show cause notice therefore complete additions made violating Principle of Natural Justice lead to encroachment of fundamental rights resultant complete addition is illegal and without jurisdiction.

**19. Invocation of Section 115BBE is illegal:** The invocation of the provision of Section 115BBE of the act, by the ld. AO is illegal, bad in law, against the principle of natural justice. The same may kindly be deleted in full.

**The contention is well supported by Jurisdictional ITAT, Jodhpur Bench, In the matter of Smt. SurajKanwarDevra Vs. ITO Ward 2(2), Udaipur ITA No. 50/Jodh/2021 AY 2017-18 Dated 23/11/2021.**

The assessee has also filed following additional WS;

“ In continuous to our earlier WS dt.03.102023 we would like to further submit that the ld. AO has not issued any show cause notice before making the addition of Rs.90,00,000/- before invoking or rejecting the books of accounts and for invoking the provisions of Sec. 115BBE. As clearly appearing from the show cause notice PB 293-294 and we have also obtained the copy of order sheet through letter dt. 05.10.2023 copy of letter and order sheet is enclosed.

And it is the settled law that no addition can be made without issuing the show cause notice or without confronting to the assessee. And we have already stated the same before the Id. CIT(A) who has not considered the same and we have also stated before your honori our earlier WS page 43-44.

In the case of **Shreyas Builders &Anr. vs. M.d.Kodnani& ors.\* (2000) 161 CTR 0527 : (2000) 242 ITR 0320** it has been held that *A perusal of the show-cause notice shows that it neither discloses the material nor the reasons. It is a cryptic notice. It does not indicate the material on the basis of which the Appropriate Authority reached the tentative conclusion that the transaction is undervalued. It also does not disclose any reason why the Appropriate Authority has reached the tentative conclusion that the transaction has been undervalued. It is further to be seen here that in ground (b) of the petition a grievance in this regard has been made by the petitioners and in the affidavit in reply filed by the respondent/ competent authority, the competent authority does not state the reasons for non-disclosure of the material as also the reasons in the show-cause notice. The basic approach of the authority is erroneous. Unless the Appropriate Authority discloses the reasons why it prima facie finds that the transaction is under valued, the person to whom the show-cause notice is issued would not be able to put up a defence. Thus issuance of such show-cause notice would defeat the very purpose for which the show-cause notice is required to be issued. A show-cause notice which does not disclose the material on the basis of which the Appropriate Authority has reached the tentative conclusion that the transaction has been undervalued and the reasons for reaching that tentative conclusion is a defective show-cause notice and, therefore, an order made on the basis of that show-cause notice would be an incompetent order and, therefore, liable to be set aside.—*  
*Mrs.NirmalLaxminarayan Grover vs. Appropriate Authority (1997) 139 CTR (Bom) 40 : 1995(2) Mh. L.J. 755 : TC S3.267 followed;C.B. Gautam vs. Union of India (1992) 108 CTR (SC) 304 r/w (1993) 110 CTR (SC) 179 : (1993) 199 ITR 530 (SC) : TC S3.142 relied on.*

Thus the Id. AO has not given or issued any show cause notice before making the additions or allegations or invoking the provisions of sec. 145(3) and 68. It was mandatory on the part of the Id. AO to issue the specific show cause notice to this effect asking to the assessee as to why the income should not be taxed as above before doing so. It is very settled legal position that a person(assessee) is entitled to opportunity to show cause as to why not the

income of the assessee is determined and charged or taxed in the manner as proposed by the Assessing Officer but in the instant case no such type of opportunity had been provided hence the addition so made may kindly be deleted . But the ld. AO has failed to do so, which is against the principal of natural justice and against the law. Thus how the ld. AO can make the addition of alleged undisclosed receipts of Rs.1,45,71,616/- for 841 receipts and other additions and disallowances. Hence the entire additions are liable to be deleted. in full kindly refer Sanghi Brothers (Indore)Limited v/s Inspecting ACIT 122 CTR 19(MP), Malik Packaging v/s CIT 284 ITR 374 (All), T.C.N. Menon v/s ITO 96 ITR 148(Ker).”

2.4 On the other hand the Ld. DR supported the order of the ld. CIT(A)

2.5 We have considered the rival contentions and carefully perused the material placed on record. As the Assessing officer has made the addition of Rs. 90,00,000/- u/s 68 by invoking the provisions of 145(3) of the act. As the cash was found at the business premises of the assessee on being asked by the search/survey team the assessee has stated that the cash was generated out of sale proceed and recorded in the regular books of accounts. However the Assessing officer was of the view that during the initial hours of the survey/ search operation, the books of the firm were not produced before the Income Tax Officials, except some sale bills of certain period, as assessee did not have any books of account at the business premises. Therefore, position of stock and cash in hand could not be verified. During the survey/ search action, it was noticed that no stock was found at the business premises, there was also no facility or tools for weighing the gold and silver, nor was there any facility for cutting the bullion in to pieces of required quantity

(weight). After a lapse of more than 4 hours from the initiation of survey Operation i.e. after 5:00PM on 15.02.2018, the accountant of M/s Balaji Jewellers, Shri Mahendra Sharma appeared at the shop where survey proceedings was going on. He brought a laptop with him and claimed that the regular books of accounts were maintained on that laptop. It was seen that the audit mode of Tally was not enabled in his laptop. During the survey and search action, the assessee failed to furnish the tax invoices/bills or vouchers in respect of sale which assessee claimed to be the source of the cash found at his business premises, whereas, this is established and very essential practice of business to issue the bill/tax invoice of sale without which the sale cannot be said to have taken place and also especially in the case of items like precious metals of Gold/silver. During the search action, the partner, Shri Sourabh Garg was specifically requested to produce the sale bills for the period after 19.01.2018 as the sale bills for the date till 19.01.2018 were found during search. However, Shri Sourabh Garg failed to produce the sale bills related to the period after 19.01.2018 and he stated (query No. 09) that only single copy of sale bills related to period after 19.01.2018 was generated which was taken by the customer. Further he was asked why the second copy was not printed. In reply to this Shri SourabhGarg stated that this is the responsibility of the accountant but he (accountant) did not print the bills. He further stated that second copy of sale bills were printed after interval of 10-15days as per convenience. In his statement

recorded u/s 131, Shri RahulSinghal (vide question No. 23) was asked about the accounting process of M/s BalajiJewellers. In his reply, he stated that, in the sales of M/s Balaji Jewellers, there was a ratio of 50:50 of cash and cheque sales. He further stated that the sold goods are delivered in the evening after the bills were prepared by their accountant ShriMahendra Sharma on his laptop. Further, he stated that bills were printed in a single copy to give to the customer at Mahendra Sharma's residence and there was no printer facility at the shop and any of the partners signed the bills. He further added that thesecond copies of sale bills were printed at the interval of 10-15 days as per convenience. A counter question was asked that when the printing facility was not available at the shop and the bills were printed at the accountant's residence, then, how the sale bills are handed over to the customers. In his reply, he claimed that sale bill was not given to the customer at the time of delivery, but the customer was allowed to take photo of the bill from the computer screen and the customer came on the next day to collect the sale bill. The claim of assessee is not acceptable as it is evident that the laptop was in possession of their part-time accountant all the time. In this situation, if accountant is not at their business premises and customer purchased goods then how did they provide them with a copy of sale bill. During the statement recorded u/s 131, ShriMahendra Sharma, Accountant of M/sBalaji Jewellers was asked (vide question No.20) whether the audit feature of Tally program, under which the

said books of accounts of M/s Balaji Jewellers were kept and maintained was On or Off i.e. enabled or disabled. In reply, ShriMahendra Sharma categorically stated that the audit feature was disabled. The audit feature being disabled dilutes the authenticity of the accounts maintained on the program. On being asked the assessee has again filed detailed reply before the Assessing officer. Assessee had stated and explained repeatedly from starting up to assessment that the cash was from the sale proceed which duly was recorded in the books of accounts and no excess stock has been found at the business premises. The assessee has also submitted that there is no defect found in the trading accounts the assessee has also submitted that cash book, financial statements of last three years stock summary all bills and vouchers of sales and Purchase and also submitted chart showing % of cash sales in this year and earlier years and stated that in past there is much higher cash sales as compared to this year. The assessee has also stated that the Turnover shown by the assessee in this year has also been accepted by the GST department which is also a Central/state government department. In support of it, assessee has also filed detailed paper book as follows;

#### APER BOOK INDEX

S. No.	Particular	Annexure	Page No.
1.	Submission before CIT(A)		1-51
2.	Copy of Partnership deed of Assessee	1	52-58
3.	Copy of PAN Card of Assessee	2	59

4.	Copy of VAT Registration	3	60
5.	Copy of GST Registration	4	61-63
6.	PANCHNAMA (SS(F)ADI-6along with Annexure A and B(Registered address of firm)	5	64-67
7.	Intimation of declaration of Bonus Shares etc. Seized	6	68
8	Inventory of cash Seized	7	69
9	Order under Section 132(3)	8	70
10	PANCHNAMA (SS(F)ADI-6 (Residential address of partner SaurabGarg)	9	71-72
11	List of Inventory of A/c Books etc. Seized	10	73
12	PANCHNAMA (SS(F) ADI-6 (Residential address of partner Rahul Singhal)	11	74-75
13	PANCHNAMA (SS(F) ADI-6 (Residential address of accountant Mahendra Sharma	12	76-77
14	List of Inventory of A/c Books etc. Seized	13	78
15	Copy of ITR for The AY 2018-2019	14	79-109
16	Cash book from 01.04.2017 to 15.02.2018	15	110-116
17	Copy of Inventory Register	16	117-122
18	Copy of Purchase Bills	17	123-146
19	Copy of Purchase Register	18	147-152
20	Copy of Sales Register	19	153-196
21	Copy of huge cash deposited in bank	20	197-198
22	Copy of letter to Investing wing Dated 16/02/2018	21	199-203
23	Copies of submission to Investing Wing for releasing the Seized cash.	22	204-214
24	Copy of all Sales Tax Return viz.VAT and GST	23	215-237
25	Copy of ITR since incorporation.	24	238-254

There apart the assessee has also filed statement of Partners and Accountant and also filed notices u/s 143(2), 142(1) and Show Cause Notice. On perusal of the record and above papers and orders of the lower authorities we are of the view that the AO has wrongly made the addition by invoking the provision of Section 68, *because once the books of accounts is rejected by invoking section 145(3) of the Act, then section 68 cannot be invoked upon the assessee. For the sake convenience, section 68 provides as under;*

**“S. 68. Cash credits.**—Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.....”

As the Hon'ble jurisdictional High court In the case of **CIT V/s G.K. Contractor 19 DTR 305(Raj.)** it has been held that Income—Cash credit—Estimation of profit after rejection of books of account—AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee's books of account by invoking the provisions of s. 145(3), no separate addition can be made on account of cash credit under s. 68 even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account as 'market outstanding'—No substantial question of law arises for consideration. Similarly the **Hon'ble Rajasthan High Court in the case of Smt. Harshil Chordia vs ITO (2008) 298 ITR 349** it was held that

"Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them".

Further the lower authority has not controverted the trading result as shown by the assessee. In our view if the cash was not from the cash sales then the stock must be found in excess to that extent but admittedly there was no excess stock found during the course of search and survey and the lower authority has failed to state that from where the questioned cash has come other than to sale. When assessee has produced each and every evidence before the assessing officer which has not been rebutted by bringing any contrary evidence except to assumption/presumption and suspicion and on the basis no addition can be made. On this proposition the Hon'ble jurisdictional High court has propounded in the case of **CIT Vs. M/s Ceramic Industries and M/s Ceramic Tableware (P) Ltd. ITA No. 117/2008, 65/2009,44 and 56 of 2010, 83/2011,63 and 65 of 2014, 124,135 and 198 of 2016 dated 25/05/2017 where it has been held**

“We agree with the arguments of the ld. AR that the main objection raised by the AO was that input/output ratio in various months has the inconsistency which has been duly explained by the assessee vide letter dated 26.03.2004 and the second objection by the AO was that the sister concern M/s. Bharat Potteries Ltd. has declared more yield and more gross profit, has also been explained by the assessee vide the same letter dated

26.03.2004. Therefore, the inconsistency in the input/out ratio in various months the reasons for which has been explained by the assessee, cannot be the basis for rejection of books of account. The yield and gross profit rate declared by the assessee can also not be the basis for rejection of books of account since M/s. Bharat Potteries Ltd. is manufacturing maximum of stoneware crockery and for many other reasons which were explained by the assessee vide its letter dated 26.03.04 which was ignored by the AO and the AO has not pointed out any specific defects in the purchases, sales, opening stock and closing stock of the assessee and **the AO has not brought on record any cogent material to prove that the assessee has sold the under-production out of the books of account.** Therefore, in such circumstances and facts of the case, the AO is not justified in rejecting the books of account by invoking Provisions of Section 145(3) of the Act and the additions made by the AO are liable to be deleted. The objection of the ld. DR that the ld. CIT(A) has not relied upon the CGCRI Report, Calcutta, the ld. AR has pointed out that in the same report it has been mentioned that the said organization is not involved in production practice and they are not sure to what extent their opinion will be useful for the purpose of the assessee and in such circumstances and facts of the case, the report of CGCRI, Calcutta alone cannot be the basis for rejection of books of account and making an estimation of wastage and the ld. CIT(A) was not justified in ignoring other material which was placed before him as mentioned hereinbefore. Therefore, the ld. CIT(A) was not justified in sustaining the applicability of Section 145(3) of the Act and addition of Rs. 11,15,087/-. Thus Ground No.1 of the assessee is allowed and the solitary ground of the Revenue is dismissed.”

Similarly in the other matter **The Honble Raj. High Court in the case of Malani Ramjivan Jagannath vs. ACIT 316 ITR 120(Raj.)** has been held **that** *In each trading account, only four entries were there of opening stock, purchase on debit side, sales and closing stock on credit side. The quantum and value of purchases and sales had not been in dispute inasmuch as they were held to be fully vouched. Value of opening stock also cannot be disputed as it came from closing stock of previous year. The inventories of closing stock was also not found to be incorrect. That is to say actual stock position was not in dispute. The previous year's books of account were not found to be incorrect. In the face of these undisputed facts and circumstances, the Tribunal could not have interfered with the order of CIT(A). In doing so, it had ignored all admitted facts in the face of which there was no occasion for the AO to have resorted to estimate method. There being no dispute about the sales and purchases, non-maintenance of stock register lost its significance so far as arriving at GP is concerned. Therefore, the CIT(A) was right in his reasoning about admitted state of affairs. Resorting to estimate of GP rate was founded on no material. Mere deviation in GP rate cannot be a ground for rejecting books of account and entering realm of estimate and guesswork. Lower GP rate shown in the books of account during current year and fall in GP rate was justified and also admitted by the AO as well as CIT(A) as well as the Tribunal. Therefore, fall in GP rate lost its significance. Having accepted the reason for fall in GP rate, namely, stiff competition in market and also that huge loss caused in particular transaction, neither the rejection of books of account was justified nor resort to substitution of estimated GP by rule of thumb merely for making certain additions. Therefore, the findings arrived at by the Tribunal suffers from basic defect of not applying its mind to the existing material which were relevant and went to the root of the matter. When all the data and entries made in the trading account were not found to be incorrect in any manner, there could not have been any other result except what has been shown by the assessee in the books of accounts. Therefore, the order of the Tribunal cannot be sustained.*

On in an identical matter the coordinate bench **VISAKHAPATNAM ITAT Bench (DB) in the matter of M/s Hirapanna Jewellers, Visakhapatnam ITA No. 253/2020 for AY 2017-18** has observed as follows;

“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.”

Further the assessing officer has not reduced the sales of Rs. 90,00,000/- included in the turnover as shown by the assessee otherwise he must have excluded from the turnover of the assessee, if he was of the view that the cash was not from the sale and from other source. We are also of the view that a receipt cannot be taken twice and taxed twice hence the approach of the assessing officer was contradictory. Further when another Taxing Government agency i.e.GST Department has accepted the sales of the assessee as shown by him then there should be no question of doubt to be raised by the department. Thus looking to the above facts details and judgements of Hon'ble Jurisdictional High court as well as other Hon'ble High courts as referred above, we are of the view that the Id. CIT(A) has wrongly sustained the additions made by the AO which is hereby deleted.

**3.1** As regards the Ground No. 4 of the assessee challenging the invocation of Section 115BBE of the Act, the Bench feels that this issue is consequential as the

addition has been deleted and thus there is no meaning of invoking Section 115BBE of the Act and the same is infructuous.

4.1 Ground No. 5 of the assessee is relating to charging of interest u/s 234A, 234B and 234C of the Act which are mandatory and consequential in nature.

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

Order pronounced in the open court on 04/ 01/2024.

Sd/-

(राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 04/01/2024

\*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Balaji Jewellers, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-4, Jaipur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.433/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar