

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 659/Mum/2023
(Assessment Year: 2019-20)**

DCIT-CC 5(2), Central Range-5, Room No. 1906, Air India Building, Nariman Point, Mumbai-400021.	Vs.	Manubhai Gems Private Ltd. 5/6/7, Megh, Opp. HSBC, Factory Lane Corner, Borivali, Mumbai- 400092 PAN : AAACW7711P
Appellant)	:	Respondent)

**Cross Objection No. 130/Mum/2023
(Assessment Year: 2019-20)**

Manubhai Gems Private Ltd. 5/6/7, Megh, Opp. HSBC, Factory Lane Corner, Borivali, Mumbai- 400092 PAN : AAACW7711P	Vs.	DCIT-CC 5(2), Central Range-5, Room No. 1906, Air India Building, Nariman Point, Mumbai-400021.
Appellant)	:	Respondent)

**Revenue/Respondent by : Smt. Sanyogita Nagpal, CIT-DR
Appellant/Assessee by : Dr. K. Shivaram & Sh. Rahul
Hakani, Advocate**

**Date of Hearing : 15.01.2024
Date of Pronouncement : 16.01.2024**

ORDER

Per Padmavathy. S, AM :

This appeal by the Revenue and the Cross Objections (CO) by the assessee are against the order of Commissioner of Income Tax (Appeals)-53, Mumbai [in short 'the CIT(A)'] dated 12.12.2022 for the AY 2019-20. The Grounds raised by the Revenue and the CO by the assessee are given below:

ITA No. 659/Mum/2023- Revenue's Appeal

"1. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition of unsubstantiated advance receipts of Rs.3,47,23,223/- received from unverifiable parties which was shown as liability by the assessee for which the assessee could not produce evidence and details of all such customers who paid the same".

"2. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition of unsubstantiated advance receipts of Rs.3,47,23,223/- received from unverifiable parties ignoring the evidence in the form of statement of Shri Sagar Patel, Personal Relation Officer of assessee recorded on oath during the course of search in which he clearly stated that he sells jewellery in cash above Rs. 2 lakhs and prepared the bills in dummy name by dividing the cash amount below Rs. 2 lakhs".

3. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition of Rs.35,00,000/- found and seized during the search ignoring the fact that the assessee was not able to furnish proper details and evidences in respect of loose papers and documents seized during the course of search and supporting documentary evidences in respect of nature and source of cash found and seized".

C.O. No. 130/Mum/2023 – Assessee

1) The Learned Commissioner Appeals erred in confirming the additions of un-reconciled stock to the extent of Rs. 8,35,787/- without appreciating that said addition is based on presumption and surmises and there was no unreconciled stock and hence the addition of Rs. 8,35,787/- may be deleted.

2) The Learned Commissioner Appeals erred in confirming addition of unexplained cash to the extent of Rs. 7,67,910/- without appreciating that

Assessee had duly explained the cash value and hence addition of Rs. 7,67,910/- may be deleted.

3) The cross-objector craves leave to amend, alter, add or delete any cross-objections.

2. The assessee is a private limited company engaged in the business of manufacturing, trading and retail sales of ornaments made of Gold, Diamond, Silver, Platinum and other precious stones and filed the return of income for AY 2019-20 on 26.10.2019 declaring total income of Rs. 14,46,54,280/- under the normal provisions of the Act and Rs. 14,26,32,486/- under section 115JB of the Act. The return was subsequently revised on 01.02.2020. There was a search and seizure action under section 132 of the Income Tax Act (the Act) carried out on Manubhai Gems Group on 26.03.2019 wherein the assessee was also covered. The search action was conducted on the business as well as the residential premises of the assessee's group. The case was centralized and notice under section 143(2) dated 10.09.2020 was duly served on the assessee. The Assessing Officer (AO) called on the assessee to furnish various details based on which he concluded the assessment under section 143(3) of the Act by making the following additions:

1. Un-reconciled stock/deficit stock/mismatch – Rs. 31,23,548/-
2. Advance received from unverifiable parties added under section 41(1)/28(iv) - Rs. 3,47,23,223/-
3. Cash found and seized treated as unexplained under section 69A – Rs. 35,00,000/-.

3. Aggrieved assessee filed further appeal before the CIT(A). The CIT(A) reduced the addition made towards un-reconciled stock to Rs. 8,35,787/- and deleted the addition made towards advance receipts and cash found and seized. Aggrieved the Revenue is in appeal before the Tribunal.

Advance receipts treated as addition under section 41(1)/28(4)

4. The Id. DR submitted that the AO has given a clear finding with regard to the advance received by the assessee claimed as received towards future sales. The Id. DR further submitted that the AO has also given findings stating that the assessee has not been able to explain and substantiate the genuineness of the receipts from customers with any specific details such as date of receipt of advance, address of the customers who paid the advance vis a vis the details of order placed by them, delivery of the ornaments as per the order, copy of final bill raised on the customer etc., and that the assessee did not submit a one to one reconciliation of the advance received with the subsequent sales. The Id. DR drew our attention to the statement recorded from one Mr. Sagar Patel, the Personal Relation Operator (PRO) of the assessee wherein he has admitted of having suppressed sales and wherever the value of cash sales more than two lakhs the amount is split in the name of dummy parties which is reflected as advance received (question no. 14 & question no. 19 in page 73 & 75 of PB). The Id. DR further drew our attention to the re-conciliation statement submitted by the assessee before the AO to submit that the said reconciliation cannot be considered as evidence in support of the claim of the assessee that the advances received were subsequently converted to sales. The Id. DR argued that the CIT(A) while giving relief to the assessee has simply relied on the reconciliation statement without calling for any further details evidencing that the advances received were genuine. The Id. DR further argued that the assessee has not discharge the onus of proving the genuineness of the impugned transactions and therefore, the AO has rightly made the addition under section 41(1)/28(iv) of the Act.

5. The Id. AR on the other hand, submitted that the assessee has furnished all the relevant details with individual party-wise break up of the entire advances received and also the details of subsequent sales along with invoice copies. The Id. AR drew our attention to the submissions dated 20.05.2019 and 23.05.2019 submitted before the Investigation Wing wherein the details of the advance received are submitted (page 213 to 237 and pg. 160 to 212 of PB) along with copies of the Final Sales Bills raised by the assessee on the customers who gave advances. The Id. AR also submitted that the above details furnished before the DDIT, Investigation were also filed before the AO and the CIT(A). The Id. AR drew our attention to the findings given by the CIT(A) to submit that the CIT(A) has thoroughly examined the details furnished and given a clear finding while deleting the addition made by the AO in this regard. The relevant findings of the CIT(A) is extracted below:

“6.3 I have considered the contentions of the AO and the assessee very carefully,. The dispute is regarding the taxability of Rs. 3,47,23,223/- shown as advances by the assessee.

6.4 It is seen that during the assessment proceedings, the appellant has furnished a chart titled as "reconciliation of advances pending as on 26.03.2019. The chart contains several columns including the amount, name of the customer, advance received further bifurcated into cash/cheque/card, advance repayment date, bill details, if such advance has resulted into sales later on. It is seen that out of advances of Rs. 3,47,23,223/-, Rs. 1,11,63,666/- has been received by way of cheque/credit card. Thus, close to 1/3 of the advances do have a banking trail, The details given by the appellant show that sales have been booked in the subsequent year in respect of several of the items and that some of the amounts have been returned back. The nature of trade i.e. Gold jewellery has also to be taken into account.

6.5 As regards the statement of Shri Sagar Patel (PRO) that bills are split below Rs. 2 lacs, the same is not relevant at this juncture for deciding the taxability of this amount in as much as the sales are booked in majority of the cases and funds are stated to have been returned back in the remaining cases. The statement may be relevant when the issue of sales splitting/cash

sales etc., are decided. As regards sales suppression made in the statement, it is a fact that separate addition for the same has been made by the AO, based on factual discrepancies in stock.

6.6 When the receipts are accounted for in the books of accounts, a case for separate addition does not lie. On perusal of the details furnished by the appellant, it is seen that Rs. 3.29 crs. Le about 95% of the advances have eventually resulted in sales in subsequent years and 5% of these advances have been returned back Further, out of the amounts refunded back, a bulk of them i.e. Rs. 11.60 lacs being refunded by way of cheque and only Rs. 5.98 lacs being refunded by way of cash.

6.6.1 In view of the above circumstances and factual basis, I am inclined to agree with the contention of the appellant that addition u/s. 41(1) is not sustainable. This is not a case where an allowance or deduction has been made for any year in respect of loss/expenditure or trading liability incurred by the assessee. Hence, the addition made u/s. 41(1) is deleted and appeal is allowed.”

6. With regard to the contention that the complete details with regard to the parties are not furnished, the ld. AR submitted that in the reconciliation statements the details such as advance bill number, advance date, customer name, mobile number, mode of payment, sales bill date against which such advance is adjusted sales bill date, GST component etc. The ld. AR also submitted that around 50% of the advance are received through A/c Payee cheque and wherever the advances not converted into sales, the amount is returned and the same is also mentioned with details in the above referred reconciliation statement. The ld. AR argued that the advances outstanding for a long period of time cannot be the reason for making the addition since the period of advance depends on the time consumed in making the selected jewellery which depends on may factors. The ld. AR submitted that the AO cannot treat the advance received as income under section 41(1) since there is no cessation of the said liability and the liability has not become unenforceable or written off by the assessee. The ld. AR further argued that when the assessee has adjusted the advance against subsequent sales, there cannot be any reason to treat

the amount outstanding as income under section 41(1). The Ld. AR relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Mahindra and Mahindra Ltd. (2018) 404 ITR 1. With regard to the alternate claim of the AO that the addition is made under section 28(iv), the ld. AR submitted that section 28(iv) cannot be applied when the assessee has received the advances in cash and in this regard also relied on the decision of CIT Vs. Mahindra and Mahindra Ltd (supra).

7. We have heard the parties and perused the material on record. There was a search operation under section 132 of the Act, carried out in the premises of the assessee and its associated entities on 26.03.2019. As on the date of search, the assessee had balance in the Advanced from Customers account to the tune of Rs. 3,47,23,233/-. The AO added the entire advance as non genuine and not verifiable and made addition under section 41(1) as the liability of the assessee is not be paid to anyone and therefore, cessation of said liability. The AO had also stated that otherwise the amount should be added as income under section 28(iv), the CIT(A) after examining the statement of reconciliation submitted by the assessee deleted the said addition. We noticed that the assessee has vide letter dated 20.05.2019 and 23.05.2019 before DDIT (Inv.) has filed detailed statement wherein various details such as advance bill number, advance date, name of the purchaser, advance amount, mode of advance and subsequent sales details such as date of sale, details of jewelry sold and the sales bill amount etc., are mentioned. The assessee had also submitted the copy of sales invoice in support of the claim that the advances are later converted to sales. We further noticed that during the course of assessment proceedings, the assessee has vide letter dated 11.02.2021 (page 115 to 254) has submitted before the AO the same set of details as was submitted during post search investigation in order to substantiate that the majority of the advance received by subsequently converted to sales and offered to tax. We also noticed

that out of the advance received outstanding as on the date of search the assessee has made sales to the tune of Rs. 3,29,54,939/- and has repaid the advances of Rs. 11,60,210/- through banking channel and Rs. 5,98,074/- through cash. The main reason for the AO to make the addition under section 41(1) is that the advance amount received is not genuine and therefore not repayable and accordingly should be added under section 41(1). We noticed that the AO has simply proceeded based on the statement recorded from the employee of the assessee and rejected the entire detailed reconciliation statement submitted by the assessee giving party-wise details of receipts of advance and subsequent sales/ refund status. The AO did not bring any adverse finding with regard to the genuineness of any of the parties as mentioned in the reconciliation statement of the assessee. We also noticed that the AO has also not taken any additional steps to examine the genuineness of the parties but has wholly relied on the statement recorded. From the perusal of the reconciliation statements and other evidences submitted by the assessee, it is clear that major portion of the amount of advance is subsequently converted into sales i.e. about 95% of the advances have subsequently resulted in sales and balance advance have been returned. In view of above factual finding in our considered view the AO is not correct in treating the entire outstanding advance as an addition under section 41(1)/28(iv) without taking into consideration or without examining the detailed party-wise break up of advances and the subsequently sales/ refund as submitted by the assessee. Therefore, we see no reason to interfere with the decision of the CIT(A) in deleting the addition after factual examination of the details submitted by the assessee.

Cash found and seized added under section 69A

8. During the course of search cash of Rs. 31,35,530/- was found at the business premises of the assessee and cash of Rs. 7,67,910/- were found at the residence of the directors of the assessee. The assessee submitted before the AO that assessee is in the business retail sale of ornaments and therefore, in the normal course of business there is high possession of cash. The assessee further submitted that as per the financial statements for year ended 31.03.2018, the assessee had shown a cash in hand of Rs. 47,05,178/- which would substantiate that the high cash balance is a normal phenomena given the nature of business of the assessee. However, the AO did not accept the submissions of the assessee and proceeded to add a sum of Rs. 35,00,000/- under section 69A of the Act. Before the CIT(A), the assessee submitted the reconciliation statement showing the entries that remained to be accounted as on the date of search and that the cash seized from the director's family cannot be added in the hands of the assessee. The CIT(A) after considering the submissions of the assessee deleted the addition by holding that

“7.3 I have considered the facts of the case. The appellant has pointed out that it possessed large amounts of cash due to its nature of business of retail sale of ornaments. The appellant has also pointed out that it had cash balance of Rs. 47,05,178/- as on 31.03.2018, as per audited books. Thus, the appellant has been able to reasonably demonstrate that large value of cash balances have been maintained by the appellant in the past

7.4 The cash balance as reflected in the books i.e. Rs. 27,39,612/- cannot be brushed aside without valid reasons. According to the appellant, after accounting for the 3 entries which remained to be made (1 addition and 2 deletion), the cash balance as per books works out to Rs. 31,35,530/-. Hence, to the extent of Rs. 31,35,530/-, the cash found is treated as explained. Thus, the balance of Rs. 7,67,910/- (Rs. 39,03,420/- minus Rs. 31,35,530/-) stands unexplained. I am not Inclined to accept the explanation of the appellant that this cash of Rs. 7,67,910/- is as per the books of Directors and their family members. No such explanation was given at the time of search and it is

strange that Directors and family members would keep cash at a retail place which already had large amounts of cash. Hence, this argument of the appellant for Rs. 7,67,910/- stands rejected.

7.4.1 At the same time, the appellant has made an alternative submission that it has to be given the benefit of telescoping in respect of sales on account of unreconciled stock. This argument of the appellant is reasonable as the issue of unaccounted sales and unaccounted cash are inextricably linked to each other. Considering that an addition of Rs. 8,35,787/- has been sustained in respect of Ground No. 1, relief to the extent of Rs. 7,67,910/- is granted. Once this is done, it is seen that no further addition remains in respect of cash of Rs. 39,03,420/- found at the time of search. Hence, this ground of appeal is treated as allowed.”

9. The Id. DR vehemently argued that from the statement recorded from the employee, it is clear that the assessee is in the habit of reflecting the sales made above Rs. 2,00,000/- in cash as unaccounted or as advance in dummy names therefore, the AO has correctly rejected the submissions of the assessee with regard to holding high cash in the normal course of business.

10. The Id. AR on the other hand, submitted that the opening cash balance as per the financial statement of the assessee was Rs. 47,05,178/- that given the nature of business of the assessee holding high cash is a normal phenomena. The Id. AR also drew our attention to the reconciliation statement as extracted below i.e. submitted before the CIT(A) (page 53 of PB).

“Statement showing the reconciliation of Physical Cash found & Cash as per Books as on 26.03.2019

	Amount in Rs.
<u>Physical Cash Found</u>	
Cash Found at Manubhai Gems Private Ltd.	3,135,530.00
Cash Found at home which were brought to the premises of the assessee.	767,910.00
Total Cash Found (a)	<u>3,903,440.00</u>

Cash in hand as per books of accounts as on 26.03.2019		
Cash As per cash ledger		
Advance received from customer pending for accounting		2,739,612.00
Less: Pending IQU Mr. Sunil and Misc Expn		640,000.00
Less: Cash Diff Unreconciled due to system Ramsom were		(106,132.00)
		<u>(137,950.00)</u>
Cash in hand as per books of directors & their family members		<u>3,135,530.00</u>
Cash Balance as per Books	(b)	<u>767,910.00</u>
		3,903,440.00
Difference	(a)-(b)	-

11. The ld. AR also submitted that before the DDIT (Inv.) the assessee has filed detailed reconciliation of the cash in hand (page 479 to 488 of PB) which were re-submitted before the AO and CIT(A). The Ld. AR argued that the assessee has given complete details of the cash in hand and therefore, the same cannot be added under section 69A of the Act. The ld. AR further submitted that when the assessee has already recorded the cash in the books of accounts, the same cannot be added under section 69A of the Act for the reason that as per the provisions of section 69A the addition can be made only in respect of such monies / assets/ articles or things which are not recorded in the books of account. In this regard, the ld. AR relied on the decisions of the co-ordinate bench in the case of DCIT Vs. Kartik Construction Co. in ITA No. 2292/Mum/2016 dated 23.02.2018 and also the decision of the Jurisdictional High Court in the case of R.B. Jessaram Fetechand Vs. CIT (1970) 75 ITR 33.

12. We have heard the parties and perused the material on record. During the course of search cash totaling to Rs. 31,35,530/- and Rs. 7,67,910/- were found the premises of the assessee and its directors. The AO made an addition of Rs. 35,00,000/- of the cash seized stating that the assessee has not been able to match customers to whom the cash sales were made and built bill matching was not done. The CIT(A) after perusing the reconciliation statement as reproduced above deleted the addition to the extent of Rs. 31,35,530/-. The balance amount of the cash seized was allowed by the CIT(A) against the unaccounted sales and unaccounted cash, the addition towards which was sustained by the CIT(A) to the tune of Rs. 8,35,787/-. We also noticed that the assessee before DDIT (Inv.) and also before the AO has provided the party-wise details from whom the cash was received and has produced a cash book which reflects the cash balance of Rs. 27,39,613/- as on the date of search. It is noticed that the assessee has submitted the cash entries pending to accounted as on the date of search whereby the entire cash seized from the assessee's premises to the tune of Rs. 31,35,530/- is explained. Further, the AO has made the addition under section 69A which reads as under:

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

(emphasis supplied)

13. From the above provisions, it is clear that the addition under section 69A could be made only with respect to those items which are not recorded in the books of account. As already mentioned as on the date of search the assessee has already

recorded a cash balance of Rs. 27.39 lakhs and has also given explanation for the balance amount therefore, we see merit in the contention of the assessee that the entire addition cannot be made under section 69A. Considering the fact that the assessee has provided detailed reconciliation and given the nature of business of the assessee, we see no infirmity in the decision of the CIT(A) in deleting the addition to the extent of Rs. 31,35,530/- added as cash received. The balance addition as confirmed by the CIT(A) is attributed towards unaccounted sales /stock the addition of which is already sustained by the CIT(A) and not contended by the assessee in this appeal, Therefore, we are inclined to uphold the decision of the CIT(A) for deleting the balance addition made towards cash seized during search operation on the ground that the unaccounted sales would cover the balance amount of cash seized.

14. In the result, the appeal of the Revenue is dismissed.

C.O. No. 130/Mum/2023

15. In the cross objections the assessee is objecting to the addition of Rs. 8,35,787/- confirmed by the CIT(A). The AO during the course of assessment proceedings made an addition of Rs. 31,23,548/- towards un-reconciled stock of Rs. 2,47,90,064/- by applying the gross profit ratio @ 12.6% on the deficit stock. The CIT(A) reworked the un-reconciled stock to Rs. 66,33,231/- and applying the GP rate of 12.6% reduced the addition to Rs. 8,35,787/-. The revised working of the deficit stock as arrived at by the CIT(A) is reproduced below –

S.No.	Material	Weight Gms/cts.	Price of garm/cts as on 27.03.2019	Unreconciled Stock (In Rs.)
1	Diamond Wt. in CTS	123.6	30,000	37,08,000
2	Colour Stones	6752.68	430	29,03,652

3	Platinum	0.04	1899.58	76
4	Silver	519.02	41.43	21,503
	Total			66,33,231

16. The ld. AR with regard to shortage in stock of Diamond submitted that the diamond was sent for photo shoot and the voucher entry for the same was not accounted in the books to the tune of 63.50 carats. The ld. AR submitted that the balance deficit is very negligible as compared to the overall stock of diamonds held by the assessee. With regard to colour stones, the ld. AR submitted that the difference is due to alloy and loose stones lying in the premises which were not part of the stock because the same is used in the ornaments and not sold separately. Therefore, the ld. AR prayed that the addition made towards un-reconciled stock be deleted.

17. The ld. DR relied on the order of the lower authorities.

18. We have heard the parties and perused the material on record. We noticed that the CIT(A) has examined the details of physical stock and stock as per books and has a clear cut finding on the un-reconciled stock. The CIT(A) based on the factual verification has re-work the reconciled stock and has given relief to the assessee. The relevant findings of the CIT(A) is extracted below:

“5.3 The contentions of the appellant are considered and discussed in respect of each of the 4 items of Diamond, Colour Stones, Platinum and Silver.

(1) Diamond: The deficit of 123.60 cts. has not been disputed. However, the claim of the appellant that it has sent diamond ornament containing 63.50 cts. for shoot under voucher is not acceptable. The appellant has not brought out any contemporaneous evidence to show that any material related to the same was present at the time of search. The voucher dated 28.03.2019 relied by the appellant is after the date of search. Even the address of the party is not mentioned and the ornament is stated to be received back on 30.03.2019. These facts do not support the claim of the appellant to provide any benefit as on 26.03.2019. As regards the balance deficit of 60.10 cts., the mere reason that the difference is negligible cannot be a ground for deletion of the addition. The

appellant had enough time to point out discrepancy during the process of valuation at the time of search. Moreover, there are discrepancies in other items also which are discussed in subsequent paras. Hence, the appellant's claim on this ground is rejected.

(ii) Colour stones: The difference of 6752.68 cts/gms of colour stones is not disputed, but, the contentions of the appellant that the rate has been mistakenly applied at Rs. 3025/- per gm which is the rate of Gold, has to be examined. As per the calculation of closing stock of loose stones as on 31.03.2019, it is seen that the appellant has loose stones of 2 varieties (5473.52 @ Rs. 251/ 669.13 @ Rs. 86/-). Similarly, it is seen that the loose stones as on 31.03.2018 have been valued at Rs. 80.04. The appellant has also enclosed 3 sample tax invoices to substantiate his contention that the price per carat of precious stone is substantially lower. The same is summarized hereunder:

Date	Name	Rate (Rs.)
1. 08.01.2019	Unidesign Jewellery (1) P. Ltd.	551.71
2. 30.01.2019	Vir Exports	12.00
3. 04.03.2019	Ghanshyam Gems	1,050-1,600

The appellant has also contended that these items include Colour Stones and alloys. This contention of inclusion of alloys is not borne out of the Annexure 2, signed by the assessee and witnesses, when the items are mentioned as 'colour stones only'. There is nothing on record to show that the low-valued alloy was weighed at all or included in this chart. Thus, this contention of the appellant is not accepted, being devoid of any factual basis.

The question which needs to be addressed now is whether the rate of colour stones is to be taken as Rs. 3,025/- or at any other rate. As stated earlier, the valuation at Rs. 251/- and Rs. 86/- as on 31.03.2019 and Rs. 80.04 as on 31.03.2018 do have to be taken into account. At the same time, as demonstrated above, the 3 sample tax invoices enclosed by the appellant itself show that the rates vary from Rs. 12 to Rs. 1,600/-. In any case of estimate, such estimate has to be bonafide, genuine and having reasonable nexus to the material on record. Having given a thoughtful consideration to the facts before me, I consider it appropriate to take the rate of colour stones at the average of rates available above. The same works out to Rs. 430/- $(251+86+80+551+12+1600/6)$, The appellant's claim to this extent is allowed

(iii) Platinum There is no dispute in this and no decision is required.

(iv) Silver The appellant's contention is that 16812.08 gms of silver was as per books and that the same has erroneously been considered as deficit. The Annexure 2 signed by

Shri Samir Sagar, Director, supports this contention of the appellant. Physical quantity of silver found at the time of search is quantified at 16332 gms. whereas the book stock as on 26.03.2019 is 15812.08 gms. This sheet has been signed by the witnesses as well as the DDIT. It is evident that the difference has been erroneously taken as 15812.98 gms instead of 519.02 gms. (16,332 less 15,812.98). Hence, this contention of the appellant is allowed

5.3.1 Pursuant to the above discussion, the unreconciled stock is reworked as follows

S.No.	Material	Weight Gms/cts.	Price of garm/cts as on 27.03.2019	Unreconciled Stock (In Rs.)
1	Diamond Wt. in CTS	123.6	30,000	37,08,000
2	Colour Stones	6752.68	430	29,03,652
3	Platinum	0.04	1899.58	76
4	Silver	519.02	41.43	21,503
	Total			66,33,231

Thus, adopting the same rate of 12.6% considered by the AO, addition to the extent of Rs. 8,35,787/- is sustained. Remaining addition of Rs. 22,87,761/- is deleted.”

19. Considering the fact that the CIT(A) has given relief after examining the records and facts submitted before him and that the assessee has not brought any additional evidence before us to substantiate the claim of relief, we are of the considered view that the CIT(A) has correctly re-worked the reconciled stock based on records and therefore, we do not see reason to interfere with the decision of the CIT(A).

20. Cross Objection No.2 is raised by the assessee is with regard to unexplained cash addition to the extent of Rs. 7,67,910/-, however, we noticed that the CIT(A) in para 7.4.1 in page 25 of his order which is extracted in the earlier part of this order has granted relief to the assessee based on the addition sustained towards un-

reconciled stock. Accordingly, the said cross objection is infructuous and does not warrant any adjudication.

21. In the result, the C.O. of the assessee is rejected.

22. In the result, appeal of the Revenue in **ITA No. 659/Mum/2023** and the C.O. of the assessee in **C.O. No. 130/Mum/2023** are dismissed.

Order pronounced in the open court on 16-01-2024.

Sd/-
(KULDIP SINGH)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai