

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.299/RPR/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Sarvesh Bardia
Bardia Niwas, Sadar Bazar,
Rajnandgaon (C.G.)-491 441
PAN: AQBPB3485F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1,
Rajnandgaon (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri S.L Anuragi, CIT-DR

सुनवाई की तारीख / Date of Hearing : 25.10.2024
घोषणा की तारीख / Date of Pronouncement : 23.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 24.04.2024, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. Ld. CIT(A) erred in confirming addition of Rs.1,19,30,000/- made by AO on account of unsecured loan treating it to be unexplained money invoking sec.69A. Addition made by A.O and confirmed by Ld. CIT(A) is illegal, arbitrary and not justified.

2. Ld. CIT(A) erred in confirming addition of Rs.1,50,50,000/-, out of total addition of Rs.1,55,50,000/- made by A.O on account of cash deposited in bank of appellant during demonetization period treating it to be unexplained money invoking sec. 69A. Addition made by A.O and confirmed by Ld. CIT(A) is illegal, arbitrary and not justified.

3. Ld. CIT(A) erred in confirming addition of Rs.85,08,297/- made by AO on account of certain credit purchases made by appellant treating it to be unexplained money invoking sec. 69A. Addition made by AO and confirmed by Ld. CIT(A) is illegal, arbitrary and not justified.

4. Without prejudice to above grounds, Ld. CIT(A) erred in confirming various additions without appreciating that provisions of sec. 69A are not applicable to additions made by AO.

5. In the facts and circumstances of the case, Ld. CIT (A) erred in facts and in law in rejecting the application for admission of additional evidences filed by appellant u/r 46A of Income Tax Rules. Ld. CIT(A) erred in holding that there is no reason or

ground which prevented the appellant from producing explanation before AO.

6. Ld. CIT(A) erred in confirming addition and passing order by violating principles of natural justice and not allowing virtual hearing to the appellant even after specific request.

5. The appellant reserves the right to amend, modify or add any of the ground/s of appeal.”

2. Succinctly stated, the assessee who is engaged in the business of trading in jewellery, had e-filed his return of income for A.Y.2017-18 on 15.11.2017 declaring an income of Rs.2,80,580/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. Thereafter, assessment was framed by the A.O vide his order passed u/s.143(3) of the Act, dated 28.12.2019, wherein the income of the assessee was determined at Rs.3,62,68,877/- after making the following additions:

Sr. No.	Particulars	Amount
1.	Addition u/s. 69A of the Act on account of unsecured loan	Rs.1,19,30,000/-
2.	Addition u/s. 69A of the Act on accounted of unexplained cash deposits	Rs.1,50,50,000/- (out of total addition of Rs.1,55,50,000/-)
3.	Addition u/s. 69A of the Act on account of credit purchase of stock	Rs.85,08,297/-

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) who disposed off the multi-facet issues involved in the appeal before him, observing as under:

(A). As regards the addition towards unsecured loans of Rs.1,19,30,000/- made by the A.O u/s.69A of the Act, the CIT(Appeals) upheld the same observing as under:

“6.2. The claim of discharging the onus by the appellant with regard to the sources for unsecured loans taken from different loan creditors during the demonetization period has been gone through and it is observed that the appellant had taken impugned loans from the following lenders on different date through banking channels:

Sl. No.	Name of the lender	Amount (Rs.)	Appellant filed confirmation/ITR and Bank statement.
1.	Laxmi Devi Lalwani	9,00,000	Yes
2.	Padam Chand Lalwani and Sons (HUF)	12,00,000	Yes
3.	Pravin Lalwani	4,00,000	Yes
4.	Khushboo Lalwani	5,00,000	Yes
5.	Kishan Gidiya	9,50,000	Yes
6.	Keshar Gidiya	11,00,000	Yes except ITR
7.	Kishan Gidiya & Sons	7,80,000	Yes
8.	Dhanesh Fin. & Leasing (M/s. Accredited Distributors Pvt. Ltd.) (as per the bank statement)	65,30,000	yes

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On a perusal of the bank statements, in all the cases the cash was deposited and immediately transferred to the appellant's account in the guise of unsecured loans. On further verification of the income details of the loans creditors, it is revealed that the no individual person had a prudent business activities and the income claimed to have been earned was also very meagre so as to substantiate the creditworthiness. The details of income as shown to have been earned by the above entities has been analyzed and observations were also recorded as under:

Sl.No	Name of the lender	Loan given amount(Rs.)	Gross total Income as per ITR (A.Y.2017-18)	Observation
1.	Laxmi Devi Lalwani	9,00,000	290762	In this case, the lender shown to have disbursed loan amount out of her total receipts from the business and other incomes. The total turnover of her business as per the computation was at Rs.7,88,700/- and sale consideration of Gold and Diamonds to the tune of Rs.3,23,271/- was shown to have been earned.

2.	Padam Chand Lalwani and Sons (HUF)	12,00,000	248867	In this case, the lender shown to have disbursed loan amount out of its total receipts from the business and other incomes. The total turnover as per the computation was at Rs. Rs.9,10,500/- and sale consideration of Gold and Diamonds to the tune of Rs.3,08,205/- was shown to have been earned.
3.	Pravin Lalwani	4,00,000	415952	In this case, the lender shown to have disbursed loan amount out of its total receipts from the salary and other incomes. The salary of Rs.3,00,000/- and interest income on unsecured loans to the tune of Rs.1,15,952/- was shown to have been earned by the lender during the financial year under consideration.
4.	Khushboo Lalwani	5,00,000	320963	In this case, the lender shown to have disbursed loan amount out of her total receipts from business and other incomes. In this case, the lender shown to have received a turnover of Rs.7,10,522/- from business and other interest incomes of Rs.1,47,443/-
5.	Kishan Gidiya	9,50,000	259735	In this case, the lender shown to have disbursed loan amount out of his receipts from commission and interest incomes. total receipts from business and other incomes. As per the computation, the lender earned income from commission and other sources to the tune of Rs.2,59,735/-only.
6.	Keshar Gidiya	11,00,000	236740	In this case, the lender shown to have disbursed loan amount out of his receipts from business. The lender shown to have received amount of Rs.9,48,500/- as turnover. However, the ITR copy was not submitted.
7.	Kishan Gidiya and Sons	7,80,000	236787	In this case, the lender shown to have disbursed loan amount out of its

				receipts from business. The lender shown to have received amount of Rs. 10,45,800/- as turnover.
8.	Dhanesh Fin. & Leasing (M/s Accredited Distributors Pvt. Ltd)	65,30,000 (as per the bank statement)	212539	In this case, the lender shown to have disbursed loan amount out of its business income. Since, the lender has very marginal profits and has shown only Rs.2.15 lacs as profit from the business, the claim of extending huge loan to the appellant is farfetched and cannot be accepted.

From the above, it is noticeable that no entity has enough income or sources to extend such huge loans in their capacity. Further, all the above lenders, either individuals or HUFs, claiming to have given the entire earnings to the appellant as unsecured loans without retaining amount for their survival. After considering the entire narrative of the appellant to prove his claim of unsecured loans from the different entities, I found it is absurd and very illogical where the entire money was earned by the entities to support the appellant in the form of Unsecured Loans without retaining funds for their livelihood expenses. The amount which was shown to have been earned in the form of receipts in business activities and same was claimed to have been deposited into bank accounts of the loan creditors. Even it is illogical, where a salaried employee (loan lender) has given entire amount to the appellant and the said person has got all his salary in one go during the demonetization in cash.

6.3. Though, the appellant has provided all the relevant details of loan creditors to prove the identity, genuineness and creditworthiness of the above loan creditors, from the facts of the case, it is unambiguous to state that the claim of discharging onus of creditworthiness by the appellant is not correct and unacceptable after perusing the evidence on which the appellant relied upon. By relying on a spirt of a judgement given by the Hon'ble High Court, Kerala in the case of CIT vs Universal Empire Educational Society [393 ITR 502 (2017)], wherein it was held that "Merely by establishing identity of creditor, assessee could not be said to have discharged burden of proof under section 68", I have no hesitation to held that the appellant has failed to discharge his onus to prove the creditworthiness of the above lenders."

6.4. After going through the submissions made before me in support of appellant's contentions, I am of the considerable

opinion that the entire affair of the appellant in claiming the genuine sources of unsecured loans from the different entities during the year under consideration is nothing but a colorable device within the meaning as proclaimed in the case of *Mc Dowell & Company Limited vs The Commercial Tax Officer* on 17 April, 1985 (SC). Therefore, I am inclined to hold that the action of the AO in disallowing the claim of unsecured loans and treated as unexplained money u/s 69A of the Act is in order and no interference is necessary to modify or otherwise in the impugned order for the said addition of Rs.1,19,30,000/-. Therefore, the ground no.1 of appeal is hereby dismissed.”

(B). As regards the addition towards unexplained cash deposits of Rs.1,55,50,000/- made by the A.O u/s. 69A of the Act, the CIT(Appeals) allowed a relief of Rs.5 lacs and sustained the balance addition of Rs.1,50,50,000/- observing as under:

“7.2 The disputed fact by the appellant is the stock of gold bullion prior to sale and the same had been categorically explained in the assessment order and the appellant has not brought any substantial evidence in contrary to the finding of the AO in the impugned order. Further, the appellant has claimed that there was a mistake in the 3CD report submitted for the A.Y. 2017-18. However, no such confirmation was found to have been filed either before the AO or before me during the appeal proceedings. After going through the impugned order, I am of the considerable opinion that there was no substantial stock of bullion for subsequent cash sales as claimed by the appellant. As far as the claim of cash in the appellant's hand as on the date of demonetization i.e. 08.11.2016 is concerned, the details of cash deposits into the appellant's accounts were gone though, the details are tabulated as under:

Bank accounts	Cash deposited (Rs.)		Period of deposits
Bandhan Bank (10160005842279)	SBN notes	45 lacs	From 22.11.2016 to 05.12.2016
	Non SBN	5 lacs	On 31.12.2016
Bank of Baroda (037411023988)	SBN notes	105.50 lacs	From 13.11.2016 to 01.12.2016
Total cash deposits		155.50 lacs	

The appellant has claimed that there was a cash balance of Rs.1,08,62,903/- in his hands as on 01.11.2016 and during the months of November and December, further cash of Rs.49,59,361/- was generated on subsequent sales. However, the appellant has deposited the cash on different dates starting from 13.11.2016 in the Bank of Baroda and on 22.11.2016 into the Bandhan Bank. When, the appellant claimed to have held such huge cash of Rs.1,08,62,903/- on 01.11.2016, prior to the demonetization, what compelled him to stay away from the depositing the demonetized cash in one go and why he had chosen to deposit the money after six days of announcement of demonetization by the Govt. The conduct and the claim of the assessee is incongruous and against human preponderance, as why he had not deposited the entire cash available with him as on the date of demonetization. The appellant either deposited its undisclosed amount or otherwise helped undisclosed, unanimous and unidentifiable persons to convert their undisclosed prohibited currency into white after notification of the demonetization. Further, the appellant has found to have deposited new currency of 2000 notes to the tune of Rs.5 lacs during the demonetization period and the remaining amount of Rs.150.50 lacs were comprising of old demonetized currency. The assessee, though aware of the demonetization, claimed to have wilfully accepted the old currency from the customers and that resulted into the cash deposits into the banks on different dates, in both circumstances, the action of the assessee was not permissible in the eyes of the law. Therefore, the order of Assessing Officer was in accordance with law. Reliance was placed on a judgement by the ITAT in the case of Vaishnavi Bullion Pvt. Ltd vs ACIT [2022] 145 taxmann.com 197 (Hyderabad -Trib.) [28-11-2022]. Any unexplained amount credited in the books of assessee shall be deemed to be of assessee if the explanation of assessee was not satisfactory or was against preponderance of probability and evidence on record and hence, Assessing Officer was justified in making additions under section 69A treating deposits of SBNs found in its bank account as unexplained money in hands of assessee. Without prejudice to the above, though the cash deposits which were claimed to have been generated out of sales is not acceptable, an amount of deposits in new currency amounting to Rs.5 lacs which was deposited by the appellant on 30.12.2016 in his Bandhan Bank account shall be treated as amount received against sale proceeds. Therefore, the appellant get the relief of Rs.5 lacs from the entire addition of Rs.155.50 lacs. The Ground no.2 is partly allowed.”

(C). Apropos the addition towards purchase of gold diamond jewellery of Rs.85,08,297/- made by the A.O u/s.69A of the Act, the CIT(Appeals) upheld the same, observing as under:

“8.3. After going through the submissions made before me in support of appellant's contentions, I am of the considerable opinion that the entire affair of the appellant in claiming the genuine purchase transaction of stock/jewellery from the individual customers just before the demonetization in the month of October, 2016 is nothing but a colorable device within the meaning as proclaimed in the case of *Mc. Dowell & Company Limited vs The Commercial Tax Officer* on 17 April, 1985 (SC). Therefore, I have no reason based on the material available with the AO, as well as submission brought in before me, to differ from him making addition of Rs.85,08,297/- u/s. 69A of the Act and the action of the- AO is upheld. Therefore, the ground no.3 of appeal is hereby dismissed.”

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by him to drive home his contentions.

7. At the threshold, we may observe that the assessee has filed before us an application dated 01.10.2024 seeking admission of certain documents as additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963, viz. (i) confirmation from “*karigar*” in respect of “*Galai charges*” (melting charges), Page No.275 of APB; and (ii) confirmation of creditors in

respect of addition u/s.69A of the Act of Rs.85,08,297/-, Page 276 to 294 of APB.

8. The A.O vide his letter dated 03.10.2024 had objected to the seeking of admission of the aforesaid documents as additional evidence by the assessee.

9. After hearing the Ld. Authorized Representatives of the both the parties on the aforesaid issue i.e. admission of the additional evidence, we are of the view that as the Tribunal had on no occasion either required production of the aforementioned documents or allowed the assessee to produce the same, therefore, seeking of admission of the same by the assessee appellant not being in conformity with Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 is declined.

10. The assessee by preferring the present appeal has sought our indulgence for adjudicating three issues, viz. (i) that as to whether or not, the CIT(Appeals) is right in law and facts of the case in sustaining the addition of Rs.1,19,30,000/- made by the A.O by treating the unsecured loans as the assessee's unexplained money u/s.69A of the Act. (ii) that as to whether or not the CIT(Appeals) is right in law and facts of the case in approving the view taken by the A.O that the cash deposits of Rs.1,50,50,000/- made by the assessee in his bank accounts during the demonetization period were sourced out of his unexplained money u/s.69A

of the Act; and (iii) that as to whether or not the CIT(Appeals) is right in law and facts of the case in confirming the addition of Rs.85,08,297/- made by the A.O by characterizing the assessee's claim of credit purchases as a camouflage of his unexplained money u/s.69A of the Act.

11. As multiple issues are involved in the present appeal, therefore, the same are being deliberated upon and dealt with by us in a chronological manner, as under:

A). Re: Re-characterization by the A.O of unsecured loans claimed by the assessee to have been received from 8 parties as his unexplained money u/s.69A of the Act : Rs.1,19,30,000/-

12. It transpires on a perusal of the record that the assessee during the subject year had claimed to have received unsecured loans aggregating to Rs.1,19,30,000/- from 8 parties, as under:

Sl. No.	Name of the lender	Amount (Rs.)	Appellant filed confirmation/ITR and Bank statement.
1.	Laxmi Devi Lalwani	9,00,000	Yes
2.	Padam Chand Lalwani and Sons (HUF)	12,00,000	Yes
3.	Pravin Lalwani	4,00,000	Yes
4.	Khushboo Lalwani	5,00,000	Yes
5.	Kishan Gidiya	9,50,000	Yes
6.	Keshar Gidiya	11,00,000	Yes except ITR

7.	Kishan Gidiya & Sons	7,80,000	Yes
8.	Dhanesh Fin. & Leasing (M/s. Accredited Distributors Pvt. Ltd.) (as per the bank statement)	65,30,000	yes

The assessee in order to discharge the onus that was cast upon him to prove the identity, creditworthiness of the lenders as well as genuineness of the respective loan transactions had filed before the A.O supporting documentary evidence, viz. (i) confirmations of lenders; (ii) copies of returns of income a/w. computation of income of the lenders; (iii) balance sheets of the lenders (wherever available); and (iv) PAN & complete addresses of all the lenders. The A.O on a perusal of the details filed by the assessee, observed that in the cases of all the lenders except for one, viz. Smt. Khushboo Lalwani cash was deposited in their bank accounts prior to advancing of the respective amounts by them to the assessee. The A.O culled out the details as regards the cash deposits in the bank accounts of the lenders in the assessment order, as under:

S.No.	Date	Name of Lender	Amount Received	Cash deposit details during demonetization as per lender's bank account
1	16/11/2016	Laxmi Devi Lalwani	9,00,000	16/11/2016: 9,00,000
2	16/11/2016	Padam Chand Lalwani HUF	12,00,000	16/11/2016: 12,00,000

3	16/11/2016	PravinLalwani	4,00,000	16/11/2016: 4,00,000
4	15/11/2016	KhushbooLalwany	5,00,000	23/08/2016: 98,000, 30/09/2016: 2,00,000
5	16/11/2016	KishanGidia	9,50,000	15/11/2016: 9,50,000
6	16/11/2016	KesharGidia	11,00,000	15/11/2016: 11,00,000
7	16/11/2016	KishanGidia & Sons	7,80,000	15/11/2016: 7,80,000
8		Dhanesh Fin & Leasing		10/11/2016: 15,00,000
	13/11/2016		20,00,000	13/11/2016: 20,00,000
	15/11/2016		20,00,000	16/11/2016: 20,00,000
	19/11/2016		5,00,000	19/11/2016: 7,00,000
	22/11/2016		2,00,000	
	30/11/2016		9,00,000	30/11/2016: 9,00,000
	30/12/2016		5,00,000	
		Total		1,19,30,000

13. Also, the A.O observed that a perusal of the bank account in case of one of the lender, viz. M/s. Dhanesh Finance & Leasing, i.e. a company in which the assessee was a shareholder and director holding 20,000 shares, revealed that same amount which was deposited in its bank account in old currency on most days was thereafter transferred to the bank account of the assessee either on the same day or next/previous day. The A.O based on the fact that the impugned loans advanced during the demonetization period by the aforementioned parties were sourced out of cash deposits in their respective bank accounts either on the same day or the immediately preceding period, thus, held the entire amount of loans of Rs.1,19,30,000/- as the assessee's unexplained money u/s.69A of the Act.

14. We find that the CIT(Appeals) in order to support his conviction that the lenders were persons of insufficient financial means, had analyzed their respective creditworthiness in the backdrop of their returns of income/business turnover/receipts/sources of income, as under:

Sl No.	Name of the lender	Loan given amount (Rs.)	Gross total Income as per ITR (A.Y. 2017-18)	Observation
1.	Laxmi Devi Lalwani	9,00,000	290762	In this case, the lender shown to have disbursed loan amount out of her total receipts from the business and other incomes. The total turnover of her business as per the computation was at Rs.7,88,700/- and sale consideration of Gold and Diamonds to the tune of Rs.3,23,271/- was shown to have been earned.
2.	Padam Chand Lalwani and Sons (HUF)	12,00,000	248867	In this case, the lender shown to have disbursed loan amount out its total receipts from the business and other incomes. The total turnover as per the computation was at Rs.9,10,500/- and sale consideration of Gold and Diamonds to the tune of Rs.3,08,205/- was shown to have been earned.
3.	Pravin Lalwani	4,00,000	415952	In this case, the lender shown to have disbursed loan amount out of its total receipts from the salary and other incomes. The salary of Rs.3,00,000/- and interest income on unsecured loans to the tune of Rs.1,15,952/- was shown to have been earned by the lender

				during the financial year under consideration.
4.	Khushboo Lalwani	5,00,000	320963	In this case, the lender shown to have disbursed loan amount out of her total receipts from business and other incomes. In this case, the lender shown to have received a turnover of Rs.7,10,522/- from business and other interest incomes of Rs.1,47,443/-
5.	Kishan Gidiya	9,50,000	259735	In this case, the lender shown to have disbursed loan amount out of his receipts from commission and interest incomes. Total receipts from business and other incomes. As per the computation, the lender earned income from commission and other sources to the tune of RS.2,59,735/- only.
6.	Keshar Gidiya	11,00,000	236740	In this case, the lender shown to have disbursed loan amount out of his receipts from business. The lender shown to have received amount of Rs.9,48,500/- as turnover. However, the ITR copy was not submitted.
7.	Kishan Gidiya and Sons	7,80,000	236787	In this case, the lender shown to have disbursed loan amount out of its receipts from business. The lender shown to have received amount of Rs.10,45,800/- as turnover.
8.	Dhanesh Fin. & Leasing (M/s Accredited Distributors Pvt. Ltd)	65,30,000 (as per the bank statement)	212539	In this case, the lender shown to have disbursed loan amount out of its business income. Since, the lender has very marginal profits and has shown only Rs.2.15 lacs as profit from the business, the claim of extending huge loan to the

				appellant is farfetched and cannot be accepted.
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Accordingly, the CIT(Appeals) was of the view that the alleged lenders were persons of no means to advance the respective loans. Apart from that, the CIT(Appeals) found it incomprehensible that the aforesaid persons despite their little means would have parted with their entire earnings by lending the respective amounts to the assessee and not retained any amount for their own survival. Thus, the CIT(Appeals) backed by his conviction that the loan creditors had no creditworthiness to advance the respective loans to the assessee, upheld the re-characterization of the amounts claimed by the assessee to have been received from the said lenders as his unexplained money u/s.69A of the Act.

15. We have thoughtfully considered the observations of the lower authorities in the backdrop of the contentions advanced by the Ld. Authorized Representatives of both the parties. At the threshold, we may herein observe that the assessee in order to discharge the primary onus that was cast upon him to substantiate the identity, creditworthiness of the lenders as well as genuineness of the respective loan transactions had filed before the A.O supporting documentary evidence, viz. (i) confirmations of the lenders; (ii) copies of the returns of income a/w. computation of income of the lenders; (iii) balance sheets of the lenders (wherever available); and (iv)

PAN & complete addresses of all the lenders. Although the A.O had observed that as the advancing of the impugned loans by the respective lenders to the assessee was preceded by cash deposits in their respective bank accounts either on the same day or in the immediately previous period and, thus, primarily for the said reason had concluded, that it was the assessee's unexplained money that was routed back to his coffers in the garb of the loan transactions, but we are afraid that he had while so observing lost sight of the documentary evidences which were filed by the assessee to discharge the primary onus that was cast upon him to prove the authenticity of the subject loan transactions. Although, at the first blush, the observation of the A.O that as the loans received by the assessee from the aforementioned parties were sourced from the cash deposits made in their bank accounts, i.e. either on the same day or during the immediately previous period raises serious doubts regarding the authenticity of the said loan transactions, but we are conscious of the settled position of law that an addition can neither be made nor justified based on doubts and suspicion. Although, there was sufficient reason for the A.O to have raised doubts as regards the authenticity of the subject loan transactions, but he was obligated to have looked into the documentary evidence that was filed by the assessee before him in his attempt to substantiate the authenticity of the said transactions. We are of a firm conviction that there could be no justification for the A.O to have summarily dispensed with the documentary evidence that was filed by

the assessee in discharge of the primary onus that was cast upon him for proving the authenticity of the loan transactions. As the assessee in the course of the assessment proceedings had filed before the A.O documentary evidences, viz. (i) confirmations of the lenders; (ii) copies of the returns of income a/w. computation of income of the lenders; (iii) balance sheets of the lenders (wherever available); and (iv) PAN & complete addresses of all the lenders, therefore, in case, if the A.O had any doubts as regards the authenticity of the aforesaid loans transaction based on a gut feeling that the cash deposits in the bank accounts of the respective lenders who were persons of insufficient financial means was the unaccounted money of the assessee that had found its way back to his coffers in the guise of loan transactions, then, he based on tangible material ought to have dislodged the veracity of the claim of the lenders who had confirmed the loan transactions. The A.O in order to disprove the claim of the lenders who had affirmed the loan transactions by filing before him their respective confirmations a/w. complete postal addresses, income-tax credentials etc. ought to have either called for the requisite details in exercise of the powers vested with him u/s.133(6) of the Act or summoned the said persons and recorded their statements u/s. 131 of the Act.

16. As observed by us hereinabove, we are of a firm conviction that as the assessee had duly discharged the primary onus that was cast upon him for

proving the identity, creditworthiness of the lenders as well as genuineness of the respective loan transactions, therefore, the onus was shifted upon the A.O who could have drawn adverse inferences qua the respective loan transactions only by placing on record documentary evidence/material dislodging the authenticity of the aforesaid claim of the assessee. Our aforesaid view that in a case where the A.O without making any independent enquiry to disprove the creditworthiness of the creditors, had without dislodging the documentary evidences filed by the assessee in support thereof made additions contrary to confirmations filed by the lenders, then the addition so made by him is liable to be deleted is supported by the judgment of the **Hon'ble High Court of Chhattisgarh** in the case of **CIT Vs. Abdul Aziz (2012) 20 taxmann.com.137 (Chhattisgarh)**. As the A.O. in the case before the Hon'ble High Court had not made any independent verification to disprove the creditworthiness of the creditors, as was established by affidavits and statements of the creditors disclosing their respective sources of income, therefore, on appeal, the said addition was vacated by the CIT(Appeals) and the Tribunal, which view was thereafter upheld by the Hon'ble High Court. Also, a similar view had been taken by the **Hon'ble High Court of Chhattisgarh** in the case of **Pawan Kumar Agrawal Vs. Income Tax Officer, TAX Case No.24 of 2011, dated 04.04.2017**. The Hon'ble High Court, had observed, that as the assessee before them had discharged the primary onus that was cast upon him as

regards proving the authenticity of the loan transactions u/s.68 of the Act, therefore, in case if the A.O was not satisfied and intended to proceed with and draw adverse inferences as regards the genuineness of the loan transactions, then he was obligated to take recourse to Sections 131 and 133(6) of the Act. For the sake of clarity, the observations of the Hon'ble High Court are culled out as under: (relevant extract)

“.....In view of the matter, the First Appellate Authority was justified, also on the basis of the judicial precedents referred by it, in entering the finding that the Assessee had discharged his primary onus under Section 68 of the Act. That having been done, the First Appellate Authority was fully justified in taking the view that it was open to the department to take recourse of Section 131 or Section 133(6) of the Act if they were to- further proceed. That not having done so, the First Appellate Authority was within its jurisdiction to conclude on facts and law, in favour of the Assessee. The Appellate Tribunal, in the Appeal at the instance of the Revenue, has not rendered the decision holding the finding of the First Appellant Authority regarding applicability of Sections 131 and 133(6) of the Act, as the case may be, is erroneous in law. So much so, the impugned decision of the Tribunal stands faulted on a substantial question of law referable to the contents of Section 68 of the Act and the failure of the Revenue to take recourse to Sections 131 and 133(6) of the Act, in the case of the Assessee, where the primary onus under Section 68 of the Act stood discharged by the Assessee.”

Also, the **Hon'ble High Court of Delhi** in the case of **Deputy Commissioner of Income Tax Vs. Rohini Builders, (2002) 256 ITR 360 (Del.)**, had held, that it is not for the assessee to prove the genuineness of the cash deposits in the bank accounts of the creditors. It was further observed by the Hon'ble High Court that if the A.O was not satisfied with the explanation of the assessee, then the proper recourse for him was to make additions in the

hands of the said creditors. Also, we find that a similar view had been taken by the ITAT, Raipur in the cases of **Prakash Godhwani Vs. ITO, ITA No. 136/RPR/2029, dated 21.09.2022** and **Amit Kumar Bansal Vs. ITO, ITA No.130/RPR/2013, dated 02.05.2017.**

17. At this stage, we may herein observe that though the A.O had held the loans as bogus, but interestingly, no adverse inference as regards the interest paid by the assessee to the respective lenders (after deduction of tax at source) had been drawn by him. Be that as it may, we are of a firm conviction that as there is no whisper in the assessment order as to why the aforesaid documents that were filed by the assessee in discharge of the primary onus that was cast upon him to prove the identity, creditworthiness of the creditors as well as genuineness of the loan transactions were not to be acted upon; or there was any infirmity emerging therefrom which dissuaded the A.O from relying on the same, therefore, the drawing of adverse inferences as regards the authenticity of the loan transactions in question by summarily rejecting the said documentary evidence can by no means be held to be justified.

18. Also, it would be relevant to point out that though the lower authorities had drawn adverse inferences as regards the genuineness of the loan transactions for the reason that the same were sourced out of cash deposits made in the bank accounts of the lenders, but we find that it is the

claim of the Ld. AR before us that the cash deposits made in the bank accounts of the lenders were primarily sourced out of the cash withdrawals that they had made from the said bank account in the immediately preceding period. The Ld. AR had filed before us a “Chart” in his attempt to establish a co-relation between the cash deposits made in the bank accounts of the lenders vis-à-vis cash withdrawals made from the said respective bank accounts, which reads as under:

Chart showing details of cash withdrawal and cash deposits by lender

Name of Lender	Amount and date of cash withdrawals	Date of cash deposit	Amount of deposit (Rs.)	Date of loan given	Amount (Rs.)	PN of PB
Laxmi Devi Lalwani	Rs. 1,16,000/- (12.09.2016) Rs. 6,16,250/- (17.10.2016) Rs. 7,32,250/- Total	16.11.2016	9,00,000/-	16.11.2016	9,00,000/-	32
Padam Chand Lalwani HUF	Rs. 5,54,600/- (12.09.2016) Rs. 4,96,000/- (21.09.2016) Rs. 10,50,600/- Total	16.11.2016	12,00,000/-	16.11.2016	12,00,000/-	40
Pravin Lalwani	Rs. 4,42,000/- (21.09.2016)	16.11.2016	4,00,000/-	16.11.2016	4,00,000/-	47
Khushboo Lalwani	No cash withdrawal	30.09.2016	1,00,000/- 2,00,000/- Total 3,00,600/-	23.08.2016 15.11.2016	5,00,000/-	52
Kishan Gidiya	Rs. 1,60,000/- (14.09.2016) Rs. 6,20,000/- (21.10.2016) Rs. 7,80,000/- Total	16.11.2016	9,50,000/-	16.11.2016	9,50,000/-	61 & 62
Keshar Gidiya	Rs. 7,44,000/- (24.10.2016)	16.11.2016	11,00,000/-	16.11.2016	11,00,000/-	68
Kishan Gidiya & Sons	Rs. 4,03,700/- (12.09.2016) Rs. 1,09,000/- (29.09.2016) Rs. 5,12,700/- Total	16.11.2016	7,80,000/-	16.11.2016	7,80,000/-	79
Dhanesh Financing & Leasing Prop.: Accredited Distributors Pvt. Ltd.	- - - - - -	13.11.2016 - 16.11.2016 - 30.11.2016 -	20,00,000/- - 20,00,000/- - 9,00,000/- -	13.11.2016 15.11.2016 19.11.2016 22.11.2016 30.11.2016 30.12.2016 03.01.2017	20,00,000/- 20,00,000/- 5,00,000/- 2,00,000/- 9,00,000/- 5,00,000/- 4,30,000/-	104 104 104 105 106 107 107
					Rs. 65,30,000/-	

19. Considering the aforesaid claim of the assessee i.e. the cash deposits made in the bank accounts of the lenders were primarily sourced out of the cash withdrawals made from the said bank accounts, further fortifies our conviction that the A.O had grossly erred in law and facts of the case in not

examining the respective lenders. We, say so, for the reason that if the A.O would have examined the respective lenders i.e. either by calling upon them u/s. 133(6) of the Act to furnish details as regards the source of cash deposits in their bank accounts; or sought an explanation on the aforesaid issue by recording their respective statements u/s. 131 of the Act, then he would had the requisite details as regards the source of the aforesaid cash deposits which could have fairly been analyzed by him in the backdrop of surrounding circumstances. Apart from that, we find that it is the Ld. AR's claim that all the aforementioned loans had been repaid by the assessee in the subsequent year, Page 295 to 304 of APB. We are of the view, the fact that the assessee had repaid the loans in the subsequent year further supports the authenticity of the said loan transactions. Our aforesaid view is fortified by the judgments of the **Hon'ble High Court of Bombay** in the case of **Pr.CIT vs. M/s.Skylark Build (2019) 180 DTR 266 (Bom.)** and that of the **Hon'ble High Court of Gujrat** in the case of **Pr.CIT Vs. Ambe Tradecorpe (P) Ltd (2022) 290 Taxman 471 (Guj)**.

20. Apropos the observation of the A.O that it is incomprehensible that the assessee despite holding a cash balance of Rs.1,00,65,306/- on 14.11.2016 (after closure of the day) had, however, still raised unsecured loans from the aforementioned parties, we are of the view that on the said standalone basis no adverse inferences could have been drawn in the hands

of the assessee. On a perusal of the records, we find that the assessee had rebutted the aforesaid observation of the A.O, claiming that as it was in need of funds for other business purposes, therefore, he had raised loans from the aforementioned parties. The Ld. AR to substantiate the aforesaid factual position had taken us through the details of utilization of cash deposits/unsecured loans credited in the assessee's bank account with Bandhan Bank, Page No.109 of APB. We find substance in the Ld. AR's claim that independent of the fact that the loans were raised by the assessee to meet out his business requirements, the A.O could not have stepped into the shoes of the assessee and guided him as to how his business is to be run.

21. We, thus, in terms of our aforesaid observations are unable to concur with the view taken by the A.O, who without disproving and dislodging the documentary evidence that was filed by the assessee in discharge of the primary onus that was cast upon him for proving the authenticity of the subject loan transactions, had summarily re-characterized the same as the assessee's unexplained money u/s.69A of the Act and, thus, set-aside the order of the CIT(Appeals) to the extent he had upheld/sustained the view taken by the A.O. Thus, the **Ground of appeal No.1** raised by the assessee is allowed in terms of our aforesaid observations.

B). Addition of the unexplained cash deposits made by the assessee

**during demonetization period in his bank account: Rs.1,50,50,000/-
u/s 69A of the Act.**

22. As is discernible from the assessment order, the A.O while framing the assessment, had observed, that the assessee during the demonetization period had made cash deposits in “Specified Bank Notes” (SBNs) in his two bank accounts, as under:

Bank accounts	Cash deposited (Rs.)	Period of deposits
Bandhan Bank (10160005842279)	50 lacs	From 22.11.2016 to 05.12.2016
Bank of Baroda (037411023988)	105.50 lacs	From 13.11.2016 to 01.12.2016
Total cash deposits	155.50 lacs	

On being queried, it was the assessee’s claim that the aforesaid cash deposits were sourced out of the cash balance of Rs. 1,52,69,341/- that was available with him as per the books of account before the start of the demonetization period i.e on 08.11.2016 (after closure of the day). As the assessee had failed to come forth with any explanation regarding the sudden rise in his sales during the first week of November, 2016 which had found its way as cash deposits in demonetized currency (SBNs) in tranches in his bank accounts and also other unusual trends, therefore, the A.O did not find favour with the claim of the assessee that the cash deposits in his bank accounts during the demonetization period were sourced from the cash-in-

hand available with him as on 08.11.2026 i.e. prior to the demonetization period. Rather, the A.O on a perusal of the records, observed that the assessee with an intent to create cash in hand in his books of account during the pre-demonetization period had come up with a concocted story of huge cash bullion sales without there being any stock. Apart from that, the A.O observed, that the claim of the assessee that he had converted the gold diamond jewellery into bullion during the pre-demonetization period was an afterthought to relate the subject cash deposits to his business receipts garnered during the pre-demonetization period. Also, the A.O observed that the 416 cash sale bills of gold bullion below an amount of Rs.50,000/- each issued by the assessee over the period 03.07.2016 to 08.11.2026, i.e. during the pre-demonetization period, was unlike the prevailing trade practice of sale of gold bullion. Accordingly, the A.O held a conviction that the assessee had split his post-demonetization cash sales (in SBN's) into bills of small denomination to evade TCS provision, and in fact, had been accepting demonetized currency after the denomination date. Further, the A.O observed that it was incomprehensible that the assessee despite having five bank accounts would have for many months held cash in hand amounting to Rs.1,52,69,341/-.

23. The A.O further observed that a perusal of the assessee's books of accounts, revealed that there was no stock of gold bullion available with him

on 31.03.2016. It was observed by him that the assessee had started making purchases of gold bullion only during the post-demonetization period i.e. w.e.f. 16.11.2016 onwards. Referring to the details before him, the A.O observed that it was difficult to fathom that the assessee without being in possession of any stock of gold bullion before demonetization had claimed to have sold gold bullion vide sale voucher No.75, dated 03.07.2016 to sale voucher No.540, dated 08.11.2016 comprising of total 416 bills aggregating to Rs.1,63,26,056/-.

24. Apropos the assessee's claim that he had converted his opening stock of gold diamond jewellery to gold bullion, which, thereafter, was sold by him during the pre-demonetization period, the same did not find favour with the A.O. Referring to the books of account, it was observed by the A.O that the entire stock of 2223 gms. of gold diamond jewellery available with the assessee on 31.03.2016 which was allegedly stated to have been converted by him during the year under consideration to gold bullion had yielded 2183 gms. of final pure metal. Accordingly, the A.O held a firm conviction that the assessee was not in possession of stock of gold bullion that was claimed by him to have been sold in cash during the pre-demonetization period and, thus, had thereafter sourced the cash deposits in his bank accounts during the demonetization period.

25. Apart from that, the A.O observed that the assessee had w.e.f. 16.11.2016 made purchases of gold bullion aggregating to a value of Rs.3.07 crore (approx.). It was observed by him that the assessee had made purchases vide seven invoices of M/s Silver Gold Point, Indore in the month of November, 2016. The A.O observing that all the seven invoices mentioned delivery of “gold cadburry” at Indore”- “DELIVERY AT INDORE”, therefore, called upon the assessee to explain that where the aforesaid gold bullion was delivered to him. In reply, the assessee claimed that based on a mutual understanding of the parties the gold bullion was delivered by the aforesaid supplier at his shop at Rajnandgaon on F.O.R basis. However, the aforesaid explanation of the assessee did not find favour with the A.O. The A.O was of the view that it was impracticable that a person would come from Indore to Rajnandgaon so frequently i.e. every next day or after gap of 3-5 days only for the purpose of delivering the gold bullion to the assessee during the demonetization period.

26. The A.O further observed that the “Cash book” balances i.e. as per the assessee’s submissions filed during the assessment proceedings vis-a-vis that disclosed by him in the “cash book” as was filed before him in response to notice u/s. 133(6) of the Act, revealed different amounts on various dates, as under:

Date	Balance as per cashbook in last submission	Balance as per cashbook submitted earlier	Difference
30/06/2016	85,147.00	78,147.00	7,000.00
31/07/2016	4,46,499.00	4,39,499.00	7,000.00
30/08/2016	8,12,531.00	7,95,531.00	17,000.00
31/10/2016	1,08,64,358.00	1,08,63,078.00	1,280.00
30/11/2016	8,05,586.00	8,07,136.00	-1,550.00
31/12/2016	1,59,084.00	1,60,144.00	-1,060.00

On being queried, it was the assessee's claim that as certain entries had remained omitted to be passed in the books of account, which, inter alia, included payments towards "galai" charges (melting charges) of gold diamond jewellery i.e. (i) dated 15.04.2016 : Rs.3,000/-; (ii) dated 20.10.2016 : Rs.9000/-; and (iii) dated 28.10.2016 : 9,550/-, which, were thereafter entered into the cash book, thus, the same had resulted to the variance/difference in the aforesaid cash balances. The A.O based on the aforesaid facts observed that the assessee by making antedated entries of "galai" charges in his "cash book" (i.e. after closure of the year i.e. 31.03.2017) had manipulated his books of accounts, which, thus, were not reliable. It was further observed by him that the assessee had purposively manipulated his books of accounts by making the aforesaid antedated entries of "galai" charges to support his concocted story of having manufactured gold bullion out of gold diamond jewellery. Accordingly, the A.O based on his aforesaid observations concluded that the assessee had

not carried out any actual “*galai*”(melting) of gold jewellery and, thus, had no stock of gold bullion available with him which could justify the cash sales of gold bullion of Rs.1,63,26,056/- (supra) that was disclosed by him in his books of account during the pre-demonetization period.

27. Accordingly, the A.O based on his aforesaid deliberations on the multi-facet issues qua the assessee’s claim that the cash deposits of Rs. 155.50 lacs (supra) made in his bank accounts during the demonetization period was sourced out of the cash sales of gold bullion of Rs.1.63 crore (approx.) during the pre-demonetization period, thus, concluded that the said claim being devoid and bereft of any merit was liable to be rejected. Ostensibly, the A.O held the entire amount of cash deposits of Rs.155.50 lacs (supra) made in the assessee’s bank accounts during the demonetization period as having been sourced out of his unexplained money u/s.69A of the Act. For the sake of clarity, the reasons that had weighed in the mind of the A.O for rejecting the assessee’s explanation that the cash deposits made in his bank accounts during the demonetization period was sourced out of the cash sales of gold bullion during the pre-demonetization period i.e. 03.07.2016 to 08.11.2016 are culled out as under:

“• There was no stock of gold bullion as on 01.04.2016. In FY 2016/17, gold bullion purchases started only on 16.11.2016 but sales of gold bullion shown to be affected between 03.07.2016 & 08.11.2016 amounting to Rs.1,63,26,056/-. This sale was without having any stock.

- Claim of appellant of having converted gold jewellery into bullion is not acceptable. Raw material converted into furnished goods during entire year was only 2,223 gms yielding 2,183 gms of pure metals.
- Out of purchase from 16.11.2016 to 03.03.2017, 7 invoices were from a single party and the gold bullion was delivered at Indore as per the purchase bills whereas appellant claimed it to have been delivered at Rajnandgaon.
- Differences in cash balance on some of the dates were found on two occasions. The books are manipulated. Galai charges included in cash book just to show melting of gold jewellery into gold bullion.
- There was different explanation in respect of method of stock valuation, at different stages.
- Average bullion sale rate is Rs.3,313.43 per gm. Even if 2,183 gms was sold, its value would be Rs.72,33,248/whereas appellant has shown total bullion sales of Rs. 3,23,55,643/-. Therefore, bullion sales of Rs.1,63,26,056/- shown up to 16.11.2016 was not possible.
- Each of the above observation of AO is explained below.”

28. We find that on appeal, the CIT(Appeals) had though vide his exhaustive deliberations not found favor with the contentions advanced by the assessee and approved the view taken by the A.O, but at the same time, taking cognizance of the fact that cash amounting to Rs.5 lacs was deposited on 30.12.2016 by the assessee in his bank account with Bandhan Bank was in new currency, therefore, was of the view that the same could safely be held to have been sourced from his regular sales and, thus, scaled down the addition made by the A.O from Rs.155.50 lacs to Rs.150.50 lacs.

29. Although the assessee tried to dispel the adverse inferences that were drawn by the A.O as regards his claim that the cash deposits in his bank accounts were sourced out of the cash sale of gold bullion carried out by him during the demonetization period, but we find that the same did not find favor with the CIT(Appeals). Although, the assessee to buttress his aforesaid claim had filed an application under Rule 46A of the Income Tax Rules, 1962 and sought liberty for admission of certain documents as additional evidence, viz. (i) confirmation of the “*karigar*” dated 10.10.2022, wherein he had stated to have carried out “*galai*” (melting) of 5457.879 gms of gold diamond jewellery which had yielded 4661.410 gms of pure metal/gold bullion; (ii) confirmations of the 19 parties from whom the assessee had claimed to have purchased gold jewellery of a value of Rs.85,08,297/- in October, 2016, but the CIT(Appeals) refused to admit the same.

30. The CIT(Appeals) based on his exhaustive deliberations on the assessee’s claim, i.e the cash deposits of Rs.150.50 lacs (supra) made in his bank accounts during the demonetization period were sourced from the cash sale proceeds of gold bullion during the pre-demonetization period, did not find favor with the same and observed as under:

“7.1. The Before me during the appeal proceedings, the appellant has requested for accepting the additional documents under rule 46A of the Income Tax Rules, 1962. On perusal of the same, it was observed that the appellant has filed some confirmations

claimed to have been received from payers towards Galai Charges which is not a new claim or contention. The appellant has already filed the details of Galai Charges made during the year under consideration. Keeping in view of the facts as brought in by the AO, which are in detailed analysis of stock availability and discrepancies in cash books, I am not inclined to accept the fresh evidence as the assessment proceedings were commenced by the AO on 17.08.2018 and after hearing the case only the AO had completed the assessment proceedings on 28.12.2019 and there is no reason or ground for appellant preventing him from producing this explanation before the AO. Therefore, the request for accepting the additional evidence u/r 46A is hereby rejected.

7.2 The disputed fact by the appellant is the stock of gold bullion prior to sale and the same had been categorically explained in the assessment order and the appellant has not brought any substantial evidence in contrary to the finding of the AO in the impugned order. Further, the appellant has claimed that there was a mistake in the 3CD report submitted for the A.Y. 2017-18. However, no such confirmation was found to have been filed either before the AO or before me during the appeal proceedings. After going through the impugned order, I am of the considerable opinion that there was no substantial stock of bullion for subsequent cash sales as claimed by the appellant. As far as the claim of cash in the appellant's hand as on the date of demonetization i.e. 08.11.2016 is concerned, the details of cash deposits into the appellant's accounts were gone though, the details are tabulated as under:

Bank accounts	Cash deposited (Rs.)		Period of deposits
Bandhan Bank (10160005842279)	SBN notes	45 lacs	From 22.11.2016 to 05.12.2016
	Non SBN	5 lacs	On 31.12.2016
Bank of Baroda (037411023988)	SBN notes	105.50 lacs	From 13.11.2016 to 01.12.2016
Total cash deposits		155.50 lacs	

The appellant has claimed that there was a cash balance of Rs.1,08,62,903/- in his hands as on 01.11.2016 and during the months of November and December, further cash of Rs.49,59,361/- was generated on subsequent sales. However, the appellant has deposited the cash on different dates starting from 13.11.2016 in the Bank of Baroda and on 22.11.2016 into the Bandhan Bank. When, the appellant claimed to have held such huge cash of Rs.1,08,62,903/- on 01.11.2016, prior to the demonetization, what compelled him to stay away from the

depositing the demonetized cash in one go and why he had chosen to deposit the money after six days of announcement of demonetization by the Govt. The conduct and the claim of the assessee is incongruous and against human preponderance, as why he had not deposited the entire cash available with him as on the date of demonetization. The appellant either deposited its undisclosed amount or otherwise helped undisclosed, unanimous and unidentifiable persons to convert their undisclosed prohibited currency into white after notification of the demonetization. Further, the appellant has found to have deposited new currency of 2000 notes to the tune of Rs.5 lacs during the demonetization period and the remaining amount of Rs.150.50 lacs were comprising of old demonetized currency. The assessee, though aware of the demonetization, claimed to have wilfully accepted the old currency from the customers and that resulted into the cash deposits into the banks on different dates, in both circumstances, the action of the assessee was not permissible in the eyes of the law. Therefore, the order of Assessing Officer was in accordance with law. Reliance was placed on a judgement by the ITAT in the case of Vaishnavi Bullion Pvt. Ltd vs ACIT [2022] 145 taxmann.com 197 (Hyderabad -Trib.) [28-11-2022]. Any unexplained amount credited in the books of assessee shall be deemed to be of assessee if the explanation of assessee was not satisfactory or was against preponderance of probability and evidence on record and hence, Assessing Officer was justified in making additions under section 69A treating deposits of SBNs found in its bank account as unexplained money in hands of assessee. Without prejudice to the above, though the cash deposits which were claimed to have been generated out of sales is not acceptable, an amount of deposits in new currency amounting to Rs.5 lacs which was deposited by the appellant on 30.12.2016 in his Bandhan Bank account shall be treated as amount received against sale proceeds. Therefore, the appellant get the relief of Rs.5 lacs from the entire addition of Rs.155.50 lacs. The Ground no.2 is partly allowed.”

31. We have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives for both the parties on the aforesaid issue, i.e. maintainability of the assessee’s claim that the cash deposits in SBN’s of Rs.150.50 lacs (supra) made in his bank accounts during the demonetization period were sourced out of the cash in hand available with

him as on 08.11.2016 i.e prior to the start of the demonetization period, which in turn was generated out of the cash sales of gold bullion during the pre-demonetization period i.e. 03.07.2016 to 08.11.2016.

32. Ostensibly, a perusal of the order of the CIT(Appeals), reveals that certain serious infirmities in the aforesaid explanation of the assessee regarding the source of cash deposits made in his bank accounts during the demonetization period had surfaced, which are being dealt with as under:

A. No stock of gold bullion available with the assessee until 16.11.2016:

33. (i). Although, the assessee claimed that the cash deposits of Rs.150.50 lacs (supra) made in his bank accounts during the demonetization period were sourced out of the cash sales (in SBN's) of gold bullion during the pre-demonetization period i.e. 03.07.2016 to 08.11.2016, but the A.O did not find favour with the same. The A.O was of the view that as the assessee had no stock of gold bullion available with him on 01.04.2016, and had made purchases of the same only from 16.11.2016 onwards, therefore, there was no substance in his claim of having carried out cash sales of gold bullion of Rs.1.63 crore (approx.) during the pre-demonetization period i.e. 03.07.2016 to 08.11.2016.

(ii). Apropos the assessee's claim before the A.O that as per his audit report in "Form 3CD" for the subject year, he had converted 2223 gms of

gold diamond jewellery into 2183 gms of gold bullion/pure metal, the same too was not found to be convincing. The A.O was of the view that even if the claim of the assessee that gold bullion of 2183 gms (supra) on conversion of gold diamond jewellery was available with him was to be accepted, the same still would not explain the sales of gold bullion of Rs.1,63,26,056/- upto 08.11.2016 (supra). Elaborating on his view, the A.O. observed that as the assessee over the year had disclosed sales of 9765 gms of gold bullion of Rs.3,23,55,643/-, therefore, the same would give an average sale price of Rs.3,31,343/- per gm. Accordingly, the A.O. observed that the sale of the aforesaid 2183 gms of gold bullion (supra) by adopting the average sale rate of 3313.43 per gm (supra) would explain the sales only to the extent of Rs.72,33,218/- [2183 gms of gold bullion X Rs. 3,31,343/- per gm].

(iii). Accordingly, the A.O based on his aforesaid observations, concluded that as the assessee during the pre-demonetization period i.e. 03.07.2016 to 08.11.2016 had no stock of gold bullion available with him, therefore, he could not have during the said period made any cash sales of gold bullion of Rs.1,63,26,056/- as was so claimed by him. Accordingly, the A.O based on his aforesaid observations rejected the assessee's claim of availability of cash-in-hand of Rs. 1,52,89,341/- on 08.11.2016, i.e sourced out of cash sale proceeds of gold bullion upto 08.11.2016, which in turn was claimed to

have been utilized by him for making cash deposits of Rs. 1,50,50,000/- in his bank accounts during the demonetization period.

B). Rejection of the assessee's claim of conversion of 5457.879 gms of gold diamond jewellery in to 4661.410 gms gold bullion

34.(i). The assessee had claimed that his previous auditor in "Form 3CD" for the subject year, had wrongly mentioned that 2223 gms of gold jewellery was converted into 2183 gms of gold bullion. It was assessee's claim that during the subject year 5457.879 gms of gold diamond jewellery was converted into 4661.410 gms of gold bullion. Elaborating further, the assessee stated that though he had requested his previous auditor (who had conducted the audit for the subject year) to issue a fresh certificate, but as he was no more continuing as his auditor, therefore, he had not cooperated and provided a fresh certificate. As observed by us hereinabove, the assessee to fortify his aforesaid claim that 5457.879 gms of gold diamond jewellery was converted into 4661.410 gms of gold bullion i.e over a preriod of three days, viz. (i) 15.04.2016; (ii) 20.10.2016 and (iii) 28.10.2016, had sought liberty of the CIT(Appeals) to place on record a certificate of Shri. Om Prakash Soni, i.e. the person to whom "*galat*" /melting charges was claimed to have been paid but the said request was declined by the CIT(Appeals).

(ii). The assessee to buttress his claim that 5457.879 gms of gold diamond jewellery was converted into 4661.410 gms gold bullion, had filed before the

A.O, viz. (i). "Chart" disclosing inward/outward movement of gold/diamond ornament stock; and (ii). "Chart" disclosing inward/outward movement of gold bullion stock, as under:

Bardia Jewels
Sadar Bazar, Rajnandgaon (C.G.) - 491441
Gold Bullion Stock
F Y 2016-17

Month	Quantity Purchased/Manufactured	Value	Quantity Sold	Value	Closing Quantity	Closing Value
Opening Balance						
April						
May						
June						
July	133.647 Gm.	Production	132.420 Gm.	4,05,332.00	1.227 Gm.	3,681.00
August	102.005 Gm.	Production	103.120 Gm.	3,09,970.00	0.112 Gm.	333.76
September	605.024 Gm.	Production	604.470 Gm.	18,76,423.00	0.666 Gm.	2,091.22
October	3,820.734 Gm.	Production	3,027.090 Gm.	92,75,113.00	794.310 Gm.	24,38,555.53
November	7,384.076 Gm.	2,23,62,030.00	1,434.830 Gm.	44,49,218.00	6,743.556 Gm.	1,25,19,179.47
December	1,785.910 Gm.	50,25,595.00	169.640 Gm.	5,10,143.00	8,359.826 Gm.	1,65,53,338.44
January	-	-	1,189.830 Gm.	37,26,549.00	7,169.996 Gm.	1,41,97,349.37
February	-	-	453.118 Gm.	12,93,895.00	6,716.878 Gm.	1,33,00,127.88
March	1,100.000 Gm.	33,00,000.00	3,419.238 Gm.	1,05,09,000.00	4,397.640 Gm.	1,31,92,924.00
Grand Total	14,931.396 Gm.	3,06,87,625.00	10,533.756 Gm.	3,23,55,643.00	4,397.640 Gm.	1,31,92,924.00

in the month of July 2016 Diamond Gold Consumption Qty 137.780 and Production Qty 133.647 Grams, Hence the value of purchase column is nil.

in the month of Aug 2016 Diamond Gold Consumption Qty 105.160 and Production Qty 102.005 Grams, Hence the value of purchase column is nil.

in the month of Sep 2016 Diamond Gold Consumption Qty 617.550 and Production Qty 605.024 Grams, Hence the value of purchase column is nil.

in the month of Oct 2016 Diamond Gold Consumption Qty 4597.389 and Production Qty 3820.734 Grams, Hence the value of purchase column is nil.

Bardia Jewels
Sadar Bazar, Rajnandgaon (C.G.) - 491441
F.Y. 2016-17
DIAMOND WITH GOLD ORNAMENTS STOCK

	Inwards		Outwards		Closing	
	Quantity	Value	Quantity	Value	Quantity	Value
Opening Balance					3,144.289 Gm.	69,91,899.42
April	583.200 Gm.	14,20,675.00	650.000 Gm.	18,20,000.00	3,077.489 Gm.	69,45,588.62
May					3,077.489 Gm.	69,45,588.62
June					3,077.489 Gm.	69,45,588.62
July			137.780 Gm.	3,30,603.11	2,939.709 Gm.	66,34,632.77
August			105.160 Gm.	2,52,331.42	2,834.549 Gm.	63,97,297.04
September			617.550 Gm.	14,81,811.23	2,216.999 Gm.	50,03,547.70
October	2,380.390 Gm.	62,43,297.00	4,597.389 Gm.	1,10,31,434.91		
November						
December						
January						
February						
March						
Grand Total	2,963.590 Gm.	76,63,972.00	6,107.879 Gm.	1,49,16,180.67		

The assessee by pressing into service the aforesaid "Charts", had tried to impress upon the A.O that that 5457.879 gms of gold diamond jewellery was converted into 4661.410 gms gold bullion, which details for the sake of clarity can be culled out and consolidated, as under (extracted from the aforesaid charts) :

Gold/diamond jewellery outwards movement for conversion into gold bullion during Financial year : 2016-17		Gold bullion production/converted from the gold/diamond jewellery	
July, 2016	137.780 gms	July, 2016	133.647 gms
August, 2016	105.160 gms	August, 2016	102.005 gms
September, 2016,	617.550 gms	September, 2016	605.024 gms
October, 2016	4597.389 gms	October, 2016	3820.734 gms
	5457.879 gms		4661.41 gms

However, the aforesaid claim of the assessee did not find favour with the CIT(Appeals) for the reason that, viz. (i) the assessee to support his

concocted story of conversion of gold diamond jewellery to gold bullion had manipulated his books of account and made antedated entries of payment of “*galai*” charges; and (ii) that though the claim of the assessee that quantitative details provided by the auditor in “Form 3CD” i.e the gold diamond jewellery of 2223 gms was converted to 2183 gms of gold bullion was incorrect, while for, the fact was that 5457.879 gms of gold diamond jewellery was converted into 4661.410 gms of gold bullion, but no certificate/confirmation of the auditor rectifying the said mistake was either placed before A.O or before him.

C). Invoices of purchase of gold bullion of M/s. Silver Gold Point, Indore during 16.11.2016 to 03.02.2017

35. The A.O. had observed that although the Invoices of purchase of gold bullion of M/s. Silver Gold Point, Indore stated that the goods would be delivered at Indore, but the assessee had raised a claim to the contrary that the gold bullion was delivered to him at his shop premises at Rajnandgaon. We are of the view that the A.O. based on his aforesaid observation had drawn adverse inferences qua the transactions of purchase of gold bullion by the assessee. However, we are of the view that as the addition of the cash deposits by the assessee in the present case is confined to the cash deposits of Rs. 150.50 lacs made by him in his bank accounts in Specified Bank Notes (SBN’s/demonetized currency) during the demonetization period,

therefore, in the backdrop of the fact that it is not the assessee's claim that he was in receipt of the sale proceeds of gold bullion subsequent to 16.11.2016 i.e. during the demonetization period in SBNs/demonetized currency, therefore, the aforesaid aspect will not have any bearing on the adjudication of the issue in hand. In other words, as it the assessee's claim that the cash deposits in SBN's of Rs. 150.50 lacs (supra) made in his bank accounts during the demonetization period were sourced from cash in hand (in SBN's) available with him on 08.11.2016 i.e. before start of the demonetization period, therefore, the issue regarding the purchases of gold bullion by the assessee from M/s. Silver Gold Point, Indore during the period 16.11.2016 to 03.02.2017 will not be not relevant qua the aforesaid issue.

36. We have thoughtfully considered the aforesaid issue in light of the observations of the CIT(Appeals), and find that the assessee's claim that he had during the pre-demonetization period i.e. 03.07.2016 to 08.11.2016 made cash sales of gold bullion which, in turn, had sourced the cash deposits made in demonetized currency/SBNs in his bank accounts during the demonetization period do not inspire any confidence.

37. At the threshold, we may herein observe, that the claim of the assessee that the A.O while framing the assessment had not rejected his books of account is found to be factually incorrect. We, say so, for the reason that the A.O had in unequivocal terms observed that the assessee by admitting

making of antedated entries of “*galai*” charges etc. in his books of account had, thus, accepted that the same were manipulated by him, (Page 9 of assessment order). Also, the A.O by referring to the difference in the cash balances appearing in the assessee’s “cash book” because of antedated entries made by him, had observed, that the assessee had himself confessed to have made antedated entries in his cash book and, thus, manipulated the books of account for creation of gold bullion stock, Page 10 of APB. Apart from that, the A.O. had observed that the difference in the cash balances appearing in the “cash book” clearly established that the books of accounts were manipulated from time to time. We, thus, based on our aforesaid observations are unable to concur with the Ld. AR’s claim that the A.O. while framing the assessment had not rejected the books of accounts of the assessee.

38. Apropos the observation of the A.O. that the assessee on 01.04.2016, had no stock of gold bullion available with him, we find that the same is an undisputed fact. Rather, the controversy involved in the present appeal hinges around the claim of the assessee that he had converted gold diamond jewellery of 5457.879 gms into 4661.410 gms of gold bullion. At the very threshold, we may herein observe, that the assessee’s auditor at Sr. No.35(b) of his audit report in “Form 3CD”, Page 158 of APB, had stated that 2223 gms of gold diamond jewellery was converted into 2183 gms.. Although, the

assessee had, thereafter, claimed that the aforesaid quantitative details provided by the auditor were incorrect but he could not fortify his said claim by placing on record any certificate/confirmation of the auditor to the said effect. We are further of the view that the manipulation of the books of account by the assessee by making antedated entries of “*galai*” charges, viz. (i) dated 15.04.2016: Rs.3000/- ; (ii) dated 20.10.2016: Rs.9000/-; and (iii) dated 28.10.2016: Rs.9550/-, which, thus, had resulted to the difference/variance in the cash balances in the “cash book” that was produced by him before the A.O, further fortifies the fact that the assessee had come forth with a concocted story and there was no actual conversion of gold diamond jewellery into gold bullion during the pre-demonetization period.

39. Apart from that, we find substance in the observation of the A.O that the very fact that all the 416 cash sale bills of gold bullion issued by the assessee during the pre-demonetization period i.e between Bill No.75, dated 03.07.2016 to Bill No.540, dated 08.11.2016 aggregating to Rs.1,63,26,056/- are of an amount below Rs.50,000/- each is not as per the prevailing trade practice. As observed by the CIT(Appeals), and rightly so, the assessee had intentionally split the aforesaid sale bills below an amount of Rs.50,000/- each so that the statutory requirement of collection of tax at source (TCS) may not be attracted.

40. We, thus, in terms of our aforesaid observations concur with the A.O/CIT(Appeals) that as the assessee did not have any stock of gold bullion available with him during the pre-demonetization period, i.e 03.07.2016 to 08.11.2016, therefore, his claim that the cash deposits in SBN's of Rs. 150.50 lacs (supra) made during the demonetization period in his bank accounts was sourced out of the cash sale proceeds of gold bullion of Rs. 1,63,26,056 made by him during the pre-demonetization period i.e 03.07.2016 to 08.11.2016 being devoid and bereft of any substance had rightly been rejected by them. Accordingly, we find no infirmity in the view taken by the CIT(Appeals), who in our considered view had rightly upheld the view taken by the A.O. that the cash deposits (in SBN's) of Rs. 150.50 lacs made in the assessee's bank accounts during the demonetization period was the assessee's unexplained money u/s 69A of the Act. Thus, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of our aforesaid observations.

C). Addition towards unexplained payments made by the assessee for purchasing of gold, diamond ornaments in the month of October, 2016 : Rs.85,08,297/-

41. As is discernible from the assessment order, the A.O. while framing the assessment, observed that the assessee before the demonetization period had made purchases (on credit) from 19 parties over the period i.e. 12th,13th,14th and 15th October, 2016 but had made payment of the

purchase consideration to them in the month of March, 2017. The A.O. observed that a perusal of the bank records revealed that the accounts of the parties from whom purchases were made by the assessee in the month of April, 2016 were immediately cleared off unlike those of the parties from whom purchases were made by him in the month of October, 2016. Accordingly, the A.O. called upon the assessee to explain that as to why it may not be inferred that the payments to the aforementioned 19 parties were made by him at the time of purchases out of his unexplained money. In reply, the assessee submitted that the payments to the aforementioned parties were deferred as per mutual understanding. Elaborating further, it was submitted by the assessee that now when the aforementioned sellers had agreed to allow some time to the assessee to make the payments, therefore, being guided by his business prudence he had decided to defer the payments in the interest of his business. Apart from that, the assessee submitted that now when the goods were available to him on credit, therefore, he had chosen to avail the said opportunity as no additional payment towards interest on the delayed payment was chargeable. However, the aforesaid explanation of the assessee did not find favour with the A.O. The A.O was of the view that as the assessee had with him a substantial amount of cash-in-hand of Rs.1,52,89,341/- on 08.11.2016, therefore, it was incomprehensible that he would have not cleared the accounts of the aforesaid purchasers from whom gold diamond ornaments were purchased.

Further, the A.O was of the view that the assessee had come up with a claim of having made the alleged credit purchases immediately before the demonetization period only with a purpose to facilitate the creation of stock in his books of account and, thus, explain the source of unexplained cash deposits made during the demonetization period in his bank accounts.

42. We have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives of both the parties regarding the aforesaid issue. Admittedly, it is a matter of fact borne from record that the assessee had over a period of 4 days i.e. 12.10.2016 to 15.10.2016 made purchases of gold diamond ornaments aggregating to Rs.85,08,297/- from 19 parties, as under:

Date	Particulars	Voucher No.	Gross Total	Gold Diamond Ornaments Purchase A/c
12-Oct-16	REKHA SINGH	BILL NO 153	7,01,631.00	7,01,631.00
12-Oct-16	SEEMA SHARMA	BILL NO 154	3,05,286.00	3,05,286.00
12-Oct-16	RAJNI CHANDWANI	BILL NO 155	6,09,316.00	6,09,316.00
12-Oct-16	MAN SINGH SAHU	BILL NO 156	5,03,308.00	5,03,308.00
12-Oct-16	PURSHOTTAM MANDLE	BILL NO 158	5,00,000.00	5,00,000.00
12-Oct-16	AKHILESH SHRIVASTAVA	BILL NO 159	3,15,464.00	3,15,464.00
13-Oct-16	ANIL KUMAR PATWA	BILL NO 160	5,02,150.00	5,02,150.00
13-Oct-16	DEVKUMAR	BILL NO. 161	5,02,301.00	5,02,301.00
13-Oct-16	VIMAL BAI JAIN	BILL NO 162	3,05,312.00	3,05,312.00
13-Oct-16	JYOTI JAIN	BILL NO 163	3,12,635.00	3,12,635.00
14-Oct-16	ROSHAN SONI	BILL NO 164	5,03,555.00	5,03,555.00
14-Oct-16	ALKA JAIN	BILL NO 165	3,00,698.00	3,00,698.00
14-Oct-16	BHARTI AWACHAT	BILL NO 166	3,02,228.00	3,02,228.00
14-Oct-16	DAYARAM YADAV	BILL NO 167	5,05,200.00	5,05,200.00
15-Oct-16	MANJU JAIN	BILL NO 168	6,16,355.00	6,16,355.00
15-Oct-16	KISHOR CHANDWANI	BILL NO 169	6,00,540.00	6,00,540.00
15-Oct-16	ASHWANI VAISHANAV	BILL NO 170	5,01,324.00	5,01,324.00

15-Oct-16	RAJKUMAR SAHU	BILL NO 171	3,20,296.00	3,20,296.00
15-Oct-16	KUNTI DEVI	BILL NO 172	3,00,698.00	3,00,698.00
	Grand Total		85,08,297	85,08,297

43. As is discernible from the record the assessee had deferred the payments to the aforementioned 19 parties (supra) and had cleared their respective accounts only in the month of March, 2017. The fact that the assessee had made payments to the aforementioned parties in March, 2017 i.e after a lapse of a period of 5 months from the date of the respective purchases remains undisputed. Ostensibly, the A.O was of the view that as the assessee who had made purchases of gold ornaments in the month of April, 2016, had immediately made the payment to the sellers, therefore, it was difficult to fathom that he would have deferred the payments to the aforementioned 19 parties. Although the assessee had tried to impress upon the A.O that as the deferment of the payments to the aforementioned parties was pursuant to their mutual understanding but he did not find favour with the same.

44. We have thoughtfully considered the aforesaid issue and are unable to persuade ourselves to concur with the view taken by the A.O, i.e, as the assessee had made payments to the aforementioned 19 parties for purchase of gold diamond ornaments after a lapse of 5 months in March, 2017, therefore, it was to be inferred that not made any genuine purchases from them. We find that purchases made by the assessee from the

aforementioned 19 parties are duly accounted for in the books of account of the assessee for the year under consideration, Page 172 of APB. Also, there is no denying the fact that the A.O had not brought on record any material that would dislodge the authenticity of the aforesaid purchase transactions.

45. Although, we find that the CIT(Appeals) while approving the view taken by the A.O and upholding the addition of Rs.85,08,297/ (supra)- made by him u/s. 69A of the Act, had observed, that his view was guided by analysis of the facts in a logical manner, but we are afraid that he had failed to take the issue to a logical end. We, say so, for the reason that in case the authenticity of the subject purchases made by the assessee from the aforementioned 19 parties was to be doubted, then, the A.O/CIT(A) ought to have verified the correct factual position by examining the respective parties which, however, was not done. In fact, we find that though the assessee had filed an application under Rule 46A before the CIT(Appeals), inter alia, seeking admission of the confirmations of the 19 parties from whom gold diamond ornaments were stated to have been purchased, Page No.173 to 192 of APB, but the same was declined by him. We are of a firm conviction that in case if the authenticity of the aforesaid purchase transactions was to be doubted, then, it was obligatory on the part of the A.O to have exercised the powers that were vested with him u/s. 133(6) and/or u/s. 131 of the Act and verified the authenticity of the claim of the assessee by either calling for

the details and/or examining the aforementioned 19 parties. However, the A.O had by-passed the aforesaid statutory obligation and had hushed through the matter, to conclude, that the assessee had come forth with a bogus claim of having purchased gold diamond ornaments of Rs.85,08,297/- (supra) from the aforementioned 19 parties only to facilitate creation of stock in his books of account, which, thus, would support his claim that the cash deposits in SBN's made in the bank accounts during the demonetization period were sourced out of the sale proceeds of gold bullion during the pre-demonetization period. We are of a firm conviction that the aforesaid view arrived at by the A.O. without carrying out necessary enquiries to dislodge the veracity of the claim of the assessee and disprove or dislodge the same, thus, cannot be summarily accepted. Apart from that, we find no justification in doubting of the authenticity of the subject purchase transactions for the standalone reason that the assessee had deferred the payments to the aforementioned parties by a period of 5 months. Although, the aforesaid purchase transactions which were not found by the A.O. to be in conformity with the consistent trade practice of the assessee, i.e making the payments to the sellers at the time of the transaction itself, undeniably could have raised some doubts, but in absence of anything having been brought on record by him to dislodge the authenticity of the said purchase transactions, we are afraid that no adverse

inferences qua the same could have validly arrived at based on assumptions and presumptions drawn by the A.O.

46. As is discernible from the record, the A.O, inter alia, was of the view that the assessee in the garb of the purchases made from the 19 parties (supra) in October, 2016, had tried to create stock of gold jewellery in his books of accounts. Accordingly, the A.O was of the view that the assessee based on the aforesaid availability of the gold diamond jewellery with him in October, 2016, had sought to justify the availability of gold bullion (received on conversion of the gold jewellery) during the pre-demonetization period and, thus, relate the cash deposits made in his bank accounts during the demonetization period with the funds available with him out of the cash sale proceeds of gold bullion made during the pre-demonetization period. Accordingly, we find that the A.O based on his aforesaid conviction, had after rejecting the claim of the assessee, concluded that the purchases of gold diamond jewellery by the assessee in October, 2016 was an attempt on his part to explain his unaccounted money deposited in his bank accounts during the demonetization period. As such, the A.O, inter alia, based on his aforesaid conviction had made an addition of the entire amount of purchases of Rs. 85,08,297/- (supra) by the assessee in October, 2016 by treating the same as a camouflage for his unexplained money u/s.69A of the Act. As

observed by us hereinabove, the view taken by the A.O had, thereafter, been approved by the CIT(Appeals).

47. We have given thoughtful consideration to the aforesaid view, based on which, the purchases of gold diamond jewellery of Rs.85,08,297/- (supra) made by the assessee in the month of October, 2026 had been held by the A.O as his unexplained money u/s.69A of the Act. Ostensibly, the A.O held a firm conviction that the assessee had come up with a concocted story that the cash deposits made in his bank accounts during the demonetization period were sourced out of the sale proceeds of gold bullion that was available with him during pre-demonetization period. Further, the A.O held a firm conviction that as the assessee prior to 16.11.2016 had no stock of gold bullion available with him, therefore, in order to justify the availability of the same with him he had claimed that the same was sourced by converting the gold diamond jewellery that was available with him during the pre-demonetization period.

48. As observed by us hereinabove, the A.O held a firm conviction that the assessee had come forth with a concocted story to explain the cash deposits made in his bank accounts during the demonetization period, i.e. the same were sourced from the sale proceeds of gold bullion and, thus, had rejected the same and held the entire amount of said cash deposits in SBN's of Rs.

150.50 lacs (supra) made in his bank accounts during the demonetization period as his unexplained money u/s. 69A of the Act.

49. We are of the view that now when the entire amount of cash deposits in SBN's made by the assessee in his bank accounts i.e. Rs.150.50 lacs (supra) had been held by the A.O as the assessee's unexplained money u/s. 69A of the Act, therefore, there could have been no justification for him to have separately made an addition based on the rejection of the assessee's claim of having purchased gold diamond jewellery from the aforementioned 19 parties of Rs.85,08,297/- (supra) in October, 2016. As the aforesaid purchases of Rs.85,08,297/- (supra) made by the assessee from 19 parties in the month of October, 2016 formed part of the gold diamond jewellery that was claimed by him to have been converted into gold bullion and sold during the pre-demonetization period, which sale proceeds were thereafter utilized for making the cash deposits (in SBN's) in his bank accounts during the demonetization period, therefore, we are of the view that there could have been no justification for the A.O. to have separately made an addition u/s 69A of the amount of the aforesaid purchases of gold jewellery of Rs.85,08,297/- (supra). Accordingly, the adverse inferences drawn by the A.O. regarding the claim of the assessee of having made purchases of Rs. 85,08,297/- (supra) from the aforesaid 19 parties would stand telescoped by the addition of Rs.150.50 lacs (supra) that was made by him and upheld

by us hereinabove. In other words, without prejudice to our observations on merits qua the issue in hand, we are of the firm conviction that the addition of Rs. 85,08,297/- (supra) would be subsumed in the addition of Rs. 150.50 lacs (supra) made by the A.O u/s 69A of the Act and upheld by us hereinabove.

50. We, thus, in terms of our aforesaid observations are not only unable to approve the very basis for making of the addition of Rs.85,08,297/- (supra) by the A.O, but even otherwise, are of the view that the said addition stands telescoped/subsumed in the addition of Rs.150.50 lacs (supra) made by the A.O u/s. 69A of the Act. Accordingly, the addition of Rs.85,08,297/- (supra) made by the A.O. which, thereafter, had been sustained by the CIT(Appeals) stands vacated in terms of our aforesaid observations. Thus, the **Ground of appeal No.3** raised by the assessee is allowed in terms of our aforesaid observations.

51. In the result, appeal filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 23rd day of January, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd January, 2025.

***#SB, Sr. PS

आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.