

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No. 1903/DEL/2022 (A.Y. 2016-17)

Sumitra Yadav B-550, SushantLok Phase-1, Galleria DLF-IV S.O. Gurgaon, Haryana PAN: AHTPY0138M	Vs.	DCIT Central Circle-7, Delhi
Appellant		Respondent

ITA No. 1904/DEL/2022 (A.Y. 2015-16)

ITA No. 1905/DEL/2022 (A.Y. 2016-17)

SushmaYadav B-550, SushantLok Phase-1, Galleria DLF-IV S.O. Gurgaon, Haryana PAN: AAMPY6287H	Vs.	DCIT Central Circle-7, Delhi
Appellant		Respondent

ITA No. 1893/DEL/2022 (A.Y. 2015-16)

ITA No. 1894/DEL/2022 (A.Y. 2016-17)

Swami Saran Sharma (HUF) B-550, SushantLok Phase-1, Galleria DLF-IV S.O. Gurgaon, Haryana PAN: AAOHS0003H	Vs.	DCIT Central Circle-7, Delhi
Appellant		Respondent

Assessee by	Sh. Ved Jain, Adv & Shri Aman Garg, Adv	
Revenue by	Ms .Nidhi Singh, CIT DR	
Date of Hearing	10/03/2025	
Date of Pronouncement	21/03/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The above five appeals are filed by the Assesseees on the similar grounds of Appeal and emerges out of a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) conducted on Jindal Bullion Ltd. (JBL) Group dated 05/01/2017. During the course of the search, a software named 'Hajir Johri' was seized, wherein the details of various transaction entered by JBL were found. It was noticed that cheques have been issued by Jindial Bullion Ltd. to the Assesseees and since there was a mentioning of cash receipt in that account, the Ld. A.O. made addition assuming that the cheques issued by the Assessee are against the cash paid by the Assessee to JBL, and held that the credits received in the bank account of the Assessee's remained unexplained as per the provision of Section 68 of the Act and also held that the commission paid to JBL at 1.5% falls under the purview of unexplained expenditure u/s 69C of the Act. Accordingly, made similar additions in all the Annexures. Aggrieved by the assessment orders, the Assesseeeshave preferred the Appeals before the Ld. CIT(A). The Ld. CIT(A) vide orders dated 21/06/2022, dismissed all the Appeals filed by the above mentioned Assesseees. Aggrieved by the orders dated 21/06/2022, respective Assesseees have preferred the captioned Appeals.

2. The Assesseees have filed additional grounds of appeal on the issue of DIN, however, the Ld. Assesseees Representative submitted that the Assessee will not press the issue of DIN and made no submissions on the additional ground. Accordingly, the additional ground of the Assesseees are dismissed as not pressed.

3. The Ld. Counsel for the Assessee submitted that there is no mentioning of any of the Assesseees name in the seized document and the onlybasis for which proceedings have been initiated against the Assesseees is the cheque issued by the Jidnal Bullion Ltd. against the purchase of jewellery from the Assesseees. There is no link with the cheques issued to the Assesseees and alleged cash receipt by the Assesseees. Further submitted that even in the statement of Parul Ahluwalia and Ekta Soni, the names of the Assessee or nature of the transaction with the Assesseees have not been mentioned. The Ld. Counsel further submitted that the issue involved in the above appeals are squarely covered by the order of the Tribunal in the case of Nirmal UppalVs. DCIT, Central Circle in ITA No. 1954 and 1955/Del/2022 and in the case of Sanmati Jewellers Vs. DCIT in ITA No. 3031/Del/2022, thus sought for allowing the above Appeal.

4. The Ld. Departmental Representative submitted that the Assessee himself accepted the ledger accounts found in the Hajir Johri books of accounts of M/s Jindal Bullion Ltd. reflecting the banking transaction, however, denied the cash and other transaction reflected therein, which will established that the amount mentioned thereon pertains to the respective Assessee. The Ld. Departmental Representative relying on the findings and the conclusions of the A.O. as well as the Ld. CIT(A), sought for dismissal of the Appeal.

5. We have heard both the parties and perused the material available on record. In all the above case, the cheques issued by Jidnal Bullion Ltd. against the purchase of jewellery from the Assesseees have been made as basis for initiating the proceedings against the respective Assessee. As per the seized material referred by the A.O, no name mentioned with regard to receipt of the cash. It is the contention of the Ld. Assesseees Representative that there is no link between alleged cash receipt mentioned in the seized document and the Assesseees. Further in the statement of Mr. Parul Ahluwalia and Ekta Soni, no name of the Assesseees have been stated. The said fact of selling of jewellery have been duly found recorded in the books of account of Jindal Bullion Ltd. which has been accepted as it is and the fact of receipt of the cash is not

forth coming in the documents relied by the A.O. or by the Ld. CIT(A). In the similar circumstances, the Co-ordinate Bench of the Tribunal in the case of Smt. Nirmal Uppal (supra) deleted the addition in following manners;

“5. Giving thoughtful consideration the matter on record and submissions what can be appreciated is that at page no. 30 to 33 of the Paper Book, the assessee / appellant has made available the return of income and computation of total income for the relevant years wherein a long term capital gain of 27,02,000/- by way of sale consideration is shown. The description of gold sold is available on the purchase memo available at page no. 33 of the paper book. The same is in terms of item, weigh and rate. The order of Ld. AO shows that the fact of sale of jewellery has been out rightly discarded and rather the explanation of this transaction of sale of jewelry has been taken as the admission of facts with regard to the alleged accommodation entry.

6. The Bench is of considered opinion that as the assessee is former Central Government Employee who retired from the office of Accountant General it can be very well believed that she must have been holding some jewelry. The ld. AO without trying to make any further inquiries from the assessee to ascertain the truthfulness of her holding of the jewellery proceeded to out rightly discard the explanation. Admittedly in the alleged incriminatory material the name of assessee is not reflected and based upon some dummy name she has been connected to the transactions. In the statement of Mr. Parul Ahluwalia or any other witness also there is no specific mention of the transaction with assessee, which has been made foundation for holding she was real beneficiary. The assessee was required to give explanation of the reasons for receiving the credit entry in her bank which she has given on the basis of the invoice issued by the JBL. Assessee has reported the sale of jewelry as ‘Long term capital gain’, To discredit the same and to connect assessee with the pseudonymous entries of cash, some evidence or circumstance based on preponderance of probability was required to be shown by Ld. AO, then mere presumption. What entries JBL was making in accounts is not conclusive against the assessee. May be the Gold purchased was not accounted in stock by JBL and it was merely reflected as cash received. Assessee was not under onus to prove the entries of JBL. Thus, the judgments relied by Ld. DR are thus distinguishable on facts. The orders of Ld. Tax authority below thus cannot be sustained. The grounds in ITA no 1955/DEL/2022 and the said appeal is allowed. As consequential effect, the Penalty appeal is also allowed.”

6. Further by relying on the order of Coordinate Bench of the Tribunal in the case of Smt. Nirmal Uppal(supra), the Co-ordinate Bench of the Tribunal in the case of Sanmati Jewelers (supra), allowed the Appeal of the Assessee thereon in following manners:-

“27. We have heard the rival submissions and perused the materials available on record. At the outset, we find that a search and seizure operation was conducted u/s 132 of the Act on 05.01.2017 in the case of Jindal Bullion Ltd (JBL). During this search, digital data stored in software called „Hazir Johri” was seized from the residence of Mr. Kushagra Jindal, promoter of JBL. The said software purportedly contained parallel books maintained by JBL where both transactions through the banking channel and cash transactions were found recorded. The Ld. AO observed that a Director and former employee of JBL, was recorded under Section 132(4) of the Act, wherein, she stated that both „pakka” (entries recorded in regular books of account) and „kaccha” (unaccounted) transactions undertaken by JBL were documented in the „Hazir Johri” software. On perusal of seized data, among others, a ledger named „Sanmati 1586” allegedly pertaining to Assessee was found. In the said ledger, the transactions made in cash as well as through banking channel were found recorded. But it is pertinent to note that the Hazir Johri Software was found and seized from the premises of JBL at the time of its search under section 132 of the Act. Hence the presumption under section 292C of the Act would apply to JBL and not to the assessee. Eventhough the proceedings stood initiated under section 153C of the Act on the assessee, the basic presumption under section 292C of the Act would only be on JBL. The assessee on its part had categorically denied the transactions reflected in the said HazirJohri Software by clearly stating that the entries found thereon contains transactions of various other unrelated parties with the assessee and that since assessee has introduced Shri Subodh Kumar Jain (Broker) to JBL, EktaSoni (Executive Assistant of JBL) had recorded all the transactions against assessee”s name. Admittedly, the entries reflected in the said software pertains to other unrelated parties with the assessee. Admittedly, the said ledger is a combined ledger account of various transactions pertaining to other unrelated parties with the assessee and contains few transactions pertaining to the assessee. However, there is no concrete material brought on record by the lower authorities to implead assessee with all those transactions. Even for

the transactions where assessee's name was mentioned, the revenue was not able to bring any corroborative evidence to prove the nature of such transaction. Hence it could be safely concluded that the assessee had given a plausible explanation about the contents of the said software. Furthermore, as rightly pointed out by the Ld.AR, there is no corroboration of those entries with the bills / vouchers , sales, stock registers etc, showing the cash sales to prove that the alleged cash sales belong to the assessee firm. Hence those entries cannot be relied upon for making an addition in the hands of the assessee.

28. We also find that the Co-ordinate Bench of this Tribunal in the case of Anoop Kumar Soni vs. DCIT in ITA No. 1641/Del/2021 dated 2.8.2023, wherein while adjudicating almost similar facts related to search on JBL, the Tribunal held that since the ledger found during the search „AP“ contains the entries of parties other than assessee, then said ledger cannot be said to be belonging to assessee and addition made on the basis of assumption was deleted. The relevant observations made by the Tribunal in this regard are as under:-

"30. The banking transactions pertaining to other entities such as Aarthav Gems & Jewels Pvt. Ltd., Surasti Overseas Pvt. Ltd., M/s Saumya Bullion & Jewellers were also recorded in the account AP whereas it had nothing to do with the assessee. In the Remand Report dated 02.08.2021 the Assessing Officer verified all these banking transactions and accepted the contentions of the assessee. In other words, it was verified by the Assessing Officer that some of the banking transactions recorded in the account AP pertain to other entities and not the assessee. Only 23% of the total banking transactions pertain to assessee and remaining 77% are between JBL and other parties. In the facts of the assessee's corroboration is missing. It is for the searched party i.e. JBL to explain the contents of material recovered from his premises. In case the searched party states that the material belongs to a third party there has to be some connect or corroboration with the third party. On the facts of the present case there is no direct evidence to establish that the account AP belongs to AnoopSoni. The entire action is based on presumptions made by the A.O. Notably, simultaneous search action on 05.01.2017 on AnoopSoni did not detect any material or evidence to establish or even suggest that he was engaged in unaccounted and undisclosed transactions involving sale/purchase of gold in cash outside books of accounts.

31. *The entire addition by treating the account AP as belonging to AnoopSoni has been made on the basis of presumption drawn and the statement of Shri Parul Ahluwalia. However, statement of the assessee has not been recorded on this issue either at the time of search, post search inquiries or even during the assessment proceedings. A careful examination of the account AP as reproduced in the assessment order would reveal that in the remarks column various acronyms have been used against different transactions such as JD, KCX, RBG Overseas, KMTY, Oven AJ, JBL Coins, Oppo Mobile, Satia, Ishaan, Anshul, Vinod 8676, Guddu etc. These abbreviations show that the transaction recorded is neither through bank nor cash because since specific acronyms have been used, these transactions cannot be inferred to be pertaining to the assessee even if it is presumed with account AP belongs to the assessee.*

32. *Hence, keeping in view, the entire factual matrix of the case, we hold that no addition is warranted in the case of the assessee. In the result, the peak credit theory set out by the ld. CIT(A) would also become infructuous. The appeals of the assessee on this ground are allowed and accordingly the appeals of the revenue are liable to be dismissed."*

29. *Similar view was taken by this Tribunal in the case of Surender Kumar Jain in ITA No. 1314/Del/2023 dated 07.03.2024 arising out of search in the JBL, wherein it was held that entries in the HajirJohri ledger of M/s. JBL, supposedly involving M/s. S.K. Impex, do not prove actual transactions without corroborative evidence such as bills or invoices. The additions are based on conjecture and the statement of Mr. Parul Ahluwalia lacking supporting evidence was deleted. The relevant findings of the said decision are as under:-*

"9. We have given our careful thought to the submission of the parties and perused the records. The facts are not in dispute. During assessment proceedings the common plea of the assessee in both the AY(s) was that merely entries found in the HajirJohri ledger of M/s. JBL supposedly in the name of M/s. S.K. Impex, the proprietary concern of the assessee does not tantamount to actual transactions having taken place in the absence of any corroborative evidence such as bills, invoices, challans etc. There is no linking in the order of the Ld. AO/CIT(A) that the alleged cash transactions are substantiated by any supporting evidence as claimed by the assessee. On the contrary, the impugned additions are based purely on conjectures and surmises solely relying on the statement of Ms. Parul Ahluwalia, Director and former employee of M/s. JBL, the

entity subjected to search operation during which her statement was recorded. The Ld. AR submitted before us that Ms. Parul Ahluwalia nowhere in her statement identified that alleged cash transactions related to the assessee. No specific questions in this regard were asked from her. Nothing is forthcoming from the side of the Revenue to controvert the above pleadings of the assessee."

30. In view of the above observations and respectfully following the judicial precedents relied upon hereinabove, we hold that no addition could be made in the hands of the assessee by placing any reliance on HazirJohri Software. Accordingly, the grounds raised by the assessee are allowed."

7. By respectfully following the orders of the Tribunal in the case of Smt. Nirmal Uppal(supra) and M/s Sanmati Jewellers (supra), we delete the respective additions made in the hand of the Assessees relying on Hazir Johri Software. Accordingly, Grounds of Appeal of the Assessees in all the Appeals are allowed.

8. In the result, Appeal of the Assessees in ITA Nos. 1903/Del/2022, 1904/Del/2022, 1905/Del/2022, 1893/Del/2022 and 1894/Del/2022 are allowed.

Order pronounced in the open court on 21st March, 2025

Sd/-

**(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER**

Date:- 21.03.2025

R.N, Sr.P.S*

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

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- 2. Respondent**
- 3. CIT**
- 4. CIT(Appeals)**
- 5. DR: ITAT**

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**