

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपील सं. / ITA No.135/Agr/2019
(निर्धारणवर्ष / Assessment Year: 2017-18)**

M/s Agroha Ornaments Solid Gold Plaza, Sarafa Bazar Lashkar, Gwalior 474011	बनाम/ Vs.	ACIT (Central) Gwalior
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ABGFA-1001-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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**2. आयकरअपील सं. / ITA No.586/Agr/2019
(निर्धारणवर्ष / Assessment Year: 2017-18)**

ACIT (Central) Gwalior	बनाम/ Vs.	M/s Agroha Ornaments Solid Gold Plaza, Sarafa Bazar Lashkar, Gwalior 474011
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ABGFA-1001-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Ashok Vijayawargiya (CA) – Ld. AR
Revenue by	:	Shri Sukesh Kumar Jain – Ld. CIT-DR

सुनवाईकीतारीख/Date of Hearing	:	20-02-2025
घोषणाकीतारीख /Date of Pronouncement	:	28-03-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid cross-appeals for Assessment Year (AY) 2017-18 arises out of the order of Ld. Commissioner of Income Tax (Appeals)-3, Bhopal [CIT(A)] dated 26-03-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 153A r.w.s. 143(3) of the Act on 27-12-2018. Having heard vehement arguments of both the sides and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

2.1 The assessee being resident firm is stated to be engaged in jewellery business. The assessee was subjected to search action u/s 132(1) on 01-12-2016. The firm was constituted on 30-08-2016. It was reconstituted on 19-10-2016 and the new partners were Shri Naveen Jain and Shri Madan Parihar.

2.2 During the course of search, it was noted that the assessee deposited cash of Rs.12.76 Crores in its two bank accounts held with Yes Bank and Axis Bank during demonetization period. The statement of Shri Naveen Jain was recorded u/s 132(4) in which he stated that cash was sourced out of sales. However, he could not produce documentary evidences.

2.3 In response to notice u/s 142(1) during the course of assessment proceedings, the assessee stated that the firm started its operations only in August 2016 and the deposits were out of sales. The assessee furnished purchase register and creditors ledgers. Except for purchases of Rs.65.09 Lacs, all the purchases were stated to be made after 14.11.2016 whereas the sales were made earlier. The complete details were not mentioned on sales bills. The Ld. AO also alleged that the assessee did not maintain proper stock records. After rejecting, assessee's vehement arguments, Ld. AO added the deposits of Rs.12.76 Crores u/s 69A and framed the assessment.

Appellate Proceedings

3.1 The assessee assailed the impugned additions by way of elaborate written submissions. The assessee contended that Ld. AO examined the books of accounts containing sales, purchases and bullion received from melting centers were was fully recorded in stock register. The sales were

fully accepted by Ld. AO. The assessee also submitted the affidavits of the partners and proprietors of melting centers in respect of bullion received from melting centers. The stock so received by the assessee was sold. No fault was found in the affidavits as filed by the assessee.

3.2 The Ld. CIT(A) noted that through these affidavits, it was claimed that due to demonetization, the prices of gold increased substantially and therefore, the owners of gold demanded their gold and the melting centers purchased gold from the assessee firm and the same was returned to the customers by the melting centers. The assessee also filed ledger account of purchases and sales. Shri Naveen Jain, in statement u/s 132(4), made voluntary disclosure of Rs.2 Crores. However, the statement was retracted after 22 months from the date of search. The Ld. CIT(A) held that entire sales could not be held to be profit of the assessee as per the decision of Hon'ble MP High Court in the case of **CIT vs. Balchand Ajit Kumar (263 ITR 610)** and also in the case of **Manmohan Sadani vs CIT (304 ITR 52)**. In these decisions, it was held that total sales could not be regarded as the profit of the assessee rather it was net profit rate which was to be adopted in such cases. Reliance was placed on various other judicial decisions to support this conclusion. Therefore, Ld. AO erred in adding the entire cash deposit which was generated out of recorded and unrecorded sales affected in cash. Only profit embedded therein has to be charged to tax. The assessee stated that entire quantity received from melting centers received for conversion and manufacturing of ornaments being not purchase, it was not entered in purchase account but due to abnormal and unprecedented demand of gold and bullion, the same was sold and later on returned to melting centers. The same would show that few of

the purchases were also not recorded. The assessee declared profit of 2.58% on regular sales. In the light of judicial decisions of jurisdictional High Court, by applying this rate, Ld. CIT(A) estimated the income of assessee at Rs.32.92 Lacs. However, the partner of the assessee firm made voluntary disclosure of Rs.2 Crores in statement recorded u/s 132(4). The admission would be a good piece of evidence though not conclusive and the same could be used against the person who makes it. Therefore, considering the admission so made, the impugned addition was restricted to the extent of Rs.2 Crores and the remaining addition was deleted which has led to cross-appeals before us.

Our findings and Adjudication

4. From the facts as borne out of records, it could be ascertained that the assessee came into existence on 20-08-2016 and the search happened within a short span of time on 01-12-2016. During the course of search, no incriminating material has been found which would show that the assessee earned unaccounted income of impugned magnitude within short span of time. The assessee, undisputedly, carries out the business of jewellery. It transpired that the assessee deposited cash of Rs.12.76 Crores in two bank accounts. During search, statement of Shri Naveen Jain (Partner) was recorded. The assessee furnished explanations and stated that cash deposit was out of sales proceeds of bullion and gold ornaments which was duly recorded in the books of accounts i.e., in the stock register in Tally data which was also seized by search party. It was also explained that apart from purchase of bullion and jewellery, the assessee had received bullion from gold melting centers for conversion of bullions into ornaments. Since the gold prices increase abruptly at the time of demonetization, the assessee sold the

bullions so received from melting centers and later on returned bullion to these centers. In support, the assessee furnished affidavits of partners and proprietors of those entities. Apparently, Ld AO had looked into the stock register by only considering the quantity as recorded in the purchase account but overlooked quantity as recorded in stock register which apart from purchases, also recorded the gold / bullion as received from melting centers. Further, the cash so deposited by the assessee was duly recorded in the cash book. The assessee also placed on record, the affidavits of melting agents (Page Nos.16 to 34 of the paper-book) from whom the bullion was received. However, no credence was been given by Ld. AO to these affidavits and no independent enquiries have been conducted to verify the veracity of the same. The assessee has also placed on record, the copies of stock register of gold bullion on Page Nos.8 to 15 of the paper book which bolsters the claim of the assessee that bullion was received from melting centers. The same has been found recorded in Tally data as seized during search.

5. So far as the statement of Shri Naveen Jain is concerned, it could be seen that he made admission of unrecorded sales and offered voluntary disclosure of Rs.2 Crores. However, nothing incriminating was found from assessee's premises at the time of search which would indicate that the assessee earned that much of unaccounted income from any other sources. The Hon'ble CBDT, vide instruction no. 286/2/2003-IT (inv. II) dated 10-03-2003 emphasized the fact the while recording statement during search and seizure, no attempt should be made to obtain confession as to the undisclosed income.

6. The Hon'ble Andhra Pradesh High Court in the case of **CIT vs. Naresh Kumar Agarwal (53 Taxmann.com 306)**, as cited by Ld. AR,

held that for all practical purposes, the statement recorded under sub-section (4) of Section 132 of the Act partakes the character of the one recorded by an investigating officer under Section 162 of Cr.P.C. Howsoever desirable, it may appear to be, it cannot be ascribed the status of a proven fact. At the most, it would constitute the basis for the prosecution to frame its case and correspondingly be a material for the defense to ensure that the prosecution sticks to its version. The question of a statement of that nature being treated as the clinching evidence, by itself, leading to any penal action does not arise. Further, a plain reading of sub-section (4) shows that the authorized officer during the course of search is empowered to examine any person if he is found to be in possession or control of any undisclosed books of account, documents, money or other valuable articles or things, elicit information from such person with regard to such account books or money which are in his possession and can record a statement to that effect. Under this provision, such statements can be used in evidence in any subsequent proceeding initiated against such person under the Act. Thus, the question of examining any person by the authorized officer arises only when he found such person to be in possession of any undisclosed money or books of account. But, if the department was not able to find any such incriminating material, there is no question of examination and recording of statement. In such a case, the admission would lose its evidentiary value. This provision embedded in sub-section (4) is obviously based on the well-established rule of evidence that mere confessional statement without there being any documentary proof shall not be used in evidence against the person who made such statement. This case law duly supports the case of the assessee.

7. Considering all these facts, we would hold that it would be in the fitness of the things to estimate the income of the assessee on the basis of net profit rate. The Ld. CIT(A) has worked out the same as Rs.32,92,080/-. Accordingly, the addition, to that extent, is sustained whereas the remaining addition stand deleted. The Ld. AO is directed to re-compute the income of the assessee.

8. ITA No.135/Agr/2019 stand partly allowed. ITA No.586/Agr/2019 stand dismissed.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 28-03-2025

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA