

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.235/Nag./2016
(Assessment Year : 2011-12)

Smt. Rajkumari Dharampal Agarwal
290, Satnami Layout, Wardhaman Nagar Appellant
Nagpur 440 008 PAN – ABHPA2472J

v/s

Dy. Commissioner of Income Tax
Central Circle-2(2), Nagpur Respondent

ITA no.289/Nag./2016
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax
Central Circle-2(2), Nagpur Appellant

v/s

Smt. Rajkumari Dharampal Agarwal
290, Satnami Layout, Wardhaman Nagar Respondent
Nagpur 440 008 PAN – ABHPA2472J

Assessee by : Shri Sachin V. Luthra
Revenue by : Shri Harshad S. Vengurlekar

Date of Hearing – 14/05/2025

Date of Order – 15/05/2025

ORDER

PER K.M. ROY, A.M.

These cross–appeals are emanating from the impugned order dated 29/02/2016, passed by the learned Commissioner of Income Tax (Appeals)–3, Nagpur, [“learned CIT(A)”], for the assessment year 2012–12 respectively.

Common facts in Brief are as follows:- During the year under consideration, the assessee was as a Proprietor of M/s. Agarwal metal

Industries, and was running stone crusher. On 16/03/2011, a search and seizure action was conducted in assessee's group cases namely M/s. Shree Agarwal Coal India Pvt. Ltd., including the assessee herein. The above mentioned assessee is one of the members of this group.

ITA no.289/ Nag./2016
Revenue's Appeal – A.Y. 2011-12

Following grounds have been raised by the Revenue:-

"1. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing additional evidence under rule 46A whereas the assessee's case is not covered by the exceptions provided under rule 46A of the I.T. Rules.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in restricting the addition made on account of cash, gold/diamond jewellery and silver articles found during search to Rs.28,17,575/- as against Rs. 1,16,09,513/- added by the Assessing Officer.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unexplained cash deposits of Rs. 4,15,040/- by admitting additional evidence under rule 46A of the I.T. Rules.

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unexplained investment in land of Rs. 27,17,000/-, by admitting additional evidence under rule 46A of the I.T. Rules.

5. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs. 29,02,116/- made on account of undisclosed sales, by admitting additional evidence under rule 46A of the I.T. Rules

6. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs. 5,50,000/- as unexplained cash deposits, by admitting additional evidence under rule 46A of the I.T. Rules.

7. Any other ground that may be urged at the time of hearing."

2. In this case, the assessee, for the year under consideration, filed its return of income on 29/09/2011, under section 139(1) of the Income Tax Act,

1961 (*"the Act"*) disclosing total income of ₹ 15,03,450 and agricultural income of ₹ 10,24,687. The return of income was processed by the Assessing Officer under section 143(3) determining the total income at ₹ 7,66,34,420, and the assessment order dated 12/03/2013, was passed accordingly.

3. On appeal, the learned CIT(A) deleted the following additions:–

	<i>Particulars</i>	<i>Original Addition made by the A.O.</i>	<i>Addition Sustained / deleted by the CIT(A)</i>
	<i>Returned Income</i>	<i>15,03,450</i>	<i>Deleted</i>
<i>Add:</i>	<i>Unexplained cash & valuables</i>	<i>1,15,09,513</i>	<i>28,17,575</i>
	<i>Unexplained cash deposits</i>	<i>4,15,040</i>	<i>Deleted</i>
	<i>Unexplained investment in land</i>	<i>27,17,000</i>	<i>Deleted</i>
	<i>Unexplained rent</i>	<i>16,49,620</i>	<i>5,00,435</i>
	<i>Unaccounted investment</i>	<i>5,52,87,300</i>	<i>Deleted</i>
	<i>Unaccounted sales</i>	<i>29,02,116</i>	<i>Deleted</i>
	<i>Unexplained cash deposits</i>	<i>5,50,000</i>	<i>Deleted</i>
	<i>Total:</i>	<i>7,66,34,039</i>	<i>33,18,010</i>

Consequent upon issuance of the impugned order passed by the learned CIT(A), the Revenue being aggrieved preferred appeal before the Tribunal only on certain issues selectively.

4. Before us, the learned Departmental Representative placed reliance on the assessment order passed by the Assessing Officer and submitted that the additions are correctly made by the Assessing Officer and the same be upheld by reversing the impugned order passed by the learned CIT(A). He further argued considering the absolute non-cooperation of the assessee during the

assessment proceedings, it was not proper on the part of the learned CIT(A) to admit the additional evidences. The learned CIT(A) had not mentioned anything in his order as to how conditions of Rule 46A are satisfied in the case to send the case to Assessing Officer for remand report and that none of the ingredients of Rule 46A are satisfied in this case. The learned Departmental Representative further contended that observations of the Assessing Officer's remand report are not considered by the learned CIT(A) in true sense and deleted the additions without completely analysing the issues and conclusion drawn by the Assessing Officer in the remand report and, therefore, considering the totality of circumstances, it would be appropriate to set aside the impugned order passed by the learned CIT(A).

5. The learned Authorised Representative submitted his point wise argument as under:-

1) No incriminating documents or, undisclosed assets, cash, jewellery etc. was found. The assessee's accountant was present in Income tax office with books of accounts, documents, papers etc. on various dates but however, due to some reasons, the AO did not record his presence and declined to see the books of accounts, documents, papers produced. The assessee had also filed adjournment application on date of hearing. Assessee counsel also appeared on several occasions but his attendance was not marked. Since the assessee was not able to submit the details due to above reasons, the assessee approached the higher authorities before completion of assessment proceedings stating the fact that its accountant and staff was not allowed to submit the details or to produce books of account. Copies of letters written to higher authorities, namely Income Tax Officer (Vig)-I; CIT (central Circle); CBDT Ministry of Finance, GOI, New Delhi are enclosed herewith wherein the assessee has stated about the injustice caused by officers and has also mentioned the name of the concerned officers.

In view of the above, it is clear that, it was not a case where assessee did not appear before the AO but the assessee was prevented by sufficient cause from producing books of accounts and details before the AO in this case. There was gross injustice caused to the assessee as the assessee's submissions were ignored by the AO. The AO did not verify the books of account, bills, vouchers

and other documents and had made all the additions on basis of surmises and conjectures.

In light of the above findings, the CIT(A) has admitted the additional evidences u/r 46A after considering all facts of the case and had called for remand report from the AO in regard to each addition made in the assessment orders. The CIT(A) had judiciously allowed additional evidences u/r 46A allowing sufficient time both to the assessee and the department. Thus, the cases are thoroughly verified by the department during remand and appeal proceedings.

ii) Regarding the addition on account of unexplained valuables of Rs.28,17,575/- The jeweller's making charges bill was erroneously dated 17.03.2010 instead of 17.03.2011, with an overwriting on the date. The AO rejected the claim citing the impossibility of conversion before the purchase date due to the incorrect date on the bill and lack of description of the manufactured items. However, the AO did not dispute the purchase of 53,227 grams of silver amounting to Rs.1717575/- from the same jeweller. The payments for the purchase and making charges were made through banking channels, which were not disputed either by the AO or CIT(A). The silver purchase was already accounted for in the assessee's books of accounts, and was no undisclosed transaction. The assessee submitted a duplicate copy of the original bill dated 17.03.2011 to CIT(A), but the AO ignored it and failed to conduct any further inquiry in remand proceedings or summoned the jeweller for verification. The payment of making charges were made subsequent to the date of purchase of silver. Copy of Bank statement highlighting the said payment is enclosed in paper book. This corroborates the assessee's contention that correct invoice bill date is 17.03.2011.

Given that the source of silver is explained and the source of payment is not disputed by AO or CIT(A), the addition was made solely due to an error in the bill date. Hence, this addition deserves to be deleted.

Diamonds of Rs.2,54,443/-: The assessee's family (4 members) had declared an income of Rs.4.46 crores over the last six years. The assessee had received Stree-dhan on marriage from her parents and in-laws. The assessee explained the sources of gold and silver worth Rs.1.16 crores to the AO and CIT(A), with supporting purchase bills, gift deeds, and bank statements. The gold jewellery was fully accepted by CIT(A), while silver was partly added due to the discrepancy in bill date. The diamonds found in search, valued at Rs.2,54,443/-, were minimal considering the financial status of the assessee and her family. Given the difficulty of preserving small bills for diamond purchases over 30 years, this small quantity cannot be termed as undisclosed or unexplained.

iii) Regarding the other additions, the AR relied on CIT(A) order.

6. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. After hearing

both the parties and perusing the materials on record, we address the issues raised in the appeal on a point-wise basis.

7. Ground no.1 raised by the Revenue relates to the admission of additional evidence under Rule 46A.

Revenue's contention that the assessee's case is not covered by the exceptions provided under the rule. Rule 46A of the Income Tax Rules are the rules related to production of additional evidence before the first appellate authority after an assessment being made by the Assessing officer. Under the said rule, the learned CIT(A) was permitted to admit evidence only under the following circumstances:-

"(a) where the Income-tax Officer has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Income-tax Officer

(c) where the appellant was prevented by sufficient cause from producing before the Income tax Officer any evidence which is relevant to any ground of appeal

(d) where the Income-tax Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce additional evidence relevant in any ground of appeal."

8. We have examined the facts of the case and note that Rule 46A permits the CIT(A) to admit additional evidence only under certain circumstances which include circumstances such as when the appellant is prevented by sufficient cause from producing evidence before the Assessing Officer. In this case, the learned CIT(A) found that the assessee was prevented from submitting certain documents as it was not allowed by the Assessing Officer

during the assessment proceedings. We find substance in the contentions of the learned Authorised Representative that compliant letters were filled by the assessee before the assessments were completed. This fact is noted and considered in by the learned CIT(A) in his impugned order as quoted by the learned Authorised Representative for the assessee in the submissions made before us. We further find that the learned CIT(A)'s observations at Para-6 & 7 of his impugned order on this issue are reproduced below for ready reference:-

"6. The assessee has highlighted the grievance petitions filed by assessee during the assessment proceedings in which allegations have been made off harassment. The assessee has enclosed correspondence made by him before the Income-tax authorities complaining that these submissions were not accepted by the AO. In this submissions dated 27.11.2003 during the appellate proceedings, the assessee has also alleged gross injustice in this case during the assessment proceedings stating that the evidences produced by him were being ignored by the AO.

7. During appellate proceedings, the assessee has highlighted the background in which the assessments in the case were completed by the AD as per the complaint of alleged harassment".

9. In the above paragraphs, the learned CIT(A) has highlighted gross injustice and harassment faced by the assessee in assessment proceedings. The learned CIT(A) had taken due cognizance of complaints filed by the assessee before assessments are completed in the cases. Lastly, it was necessary for the learned CIT(A) to allow the assessee to submit additional evidences under Rule 46A, without which the proper income of the assessee could not be determined in the interest of justice. The said facts is supported by the judgment of the Hon'ble Delhi High Court in CIT v/s Virgin Securities and Credits P. Ltd. [2011] 332 ITR 396 (Del.) wherein the Hon'ble Court held

that the CIT(A) should admit the additional evidence if he finds that the same is crucial for the disposal of the appeal. The decision of the learned CIT(A) is supported by the decision of the Co-ordinate Bench of the Tribunal, Delhi Bench, rendered in ITO v/s Bhavya Lakhani Traders & Suppliers (P) Ltd., ITA no.5409/Del./2010), vide order dated 16/10/2012, where it was held that the CIT(A) is empowered to admit additional evidence under Rule 46A if the assessee is prevented from presenting evidence before the Assessing Officer. We, therefore, uphold the impugned order passed by the learned CIT(A) admitting the additional evidence and no contravention of Rule 46A has occurred in this case. Thus, ground no.1, raised by the Revenue is dismissed.

10. Ground no.2, raised by the Revenue relates to the addition on account of cash, gold/diamond jewellery and silver articles found during search to ₹ 28,17,575 as against ₹ 1,16,09,513 added by Assessing Officer.

11. The Assessing Officer has made the addition for Gold ornaments, silver articles, etc., found in bank locker and cash ₹ 50,47,355 and addition for Gold ornaments, silver articles found at residence of ₹ 65,62,158. Both these additions were in respect of gold and silver jewellery found during search from the bedroom of the assessee and from the bank locker. Addition of ₹ 1,16,09,513, was restricted to ₹ 28,17,575 by learned CIT(A).

12. The additions were made substantively in assessee's hands by stating that the assessee's submission lacks supporting evidence. The learned CIT(A)'s findings are given at Para-16 of the impugned order are reproduced herein below:-

"16. I have considered the assessment order of the AO, submission of the assessee, remand report of the AO and assessee's response to Remand Report. The assessee has reconciled and explained the gold jewellery, Silver items and cash in his submission dated 22.02.2016 as under:-

Sr. no.	Found			Source of acquisition			
	Gold (gm)	Silver (Kg.)	Diamond		Gold (gm)	Silver (kg.)	Diamond
1.	2167.15	60.291	84.17	1. Gift from brother in law	842.35	11.000	
2.				2. Purchase in A.Y. 2011-12	397.47	-	67.28
				3. Purchase prior to A.Y.	12.205	-	6.70
				4. StreeDhan as per circular and case law	950		
<i>Total</i>	2167.15	60.291	84.17	<i>Total</i>	2184.025	11.000	73.98

13. In support of her claim of purchase during F.Y. 2010-11, the assessee has submitted copies of the purchase bills of herself and family members of diamond, gold and silver and the balance sheets reflecting the gold and silver purchased by the assessee and her husband over the years. In relation to the gift of gold and silver from her brother-in-law, the gift deed reflecting the gold and silver has been submitted by the assessee. The relevant copies of accounts of Shri Purushottam Agarwal from whom the alleged gift was received, was also received by the assessee. All these documents were Also verified by the Assessing Officer during the course of remand proceedings. None of these details were submitted by the assessee during the assessment proceedings. The details and documents have been submitted before the

Assessing Officer during the remand proceedings and have been verified by him. However, the Assessing Officer has discredited and rejected the assessee's explanation on the following arguments:-

- "a) The cash was found from locker and could not be part of the cash book.*
- b) The jewellery purchased during the year was just before or after the date of search. The payment for the jewellery and silver has been made by the assessee after the search.*
- c) The gift from brother-in-law, Shri Purushottam Agrawal was not claimed during therefore is an after-thought.*
- d) The description of silver and jewellery in gift deed and in bills is different from what was found and seized as per inventory."*

14. The assessee has rebutted the Assessing Officer's observations in her submission dated 22/02/2016 and 24/02/2016 stating that the explanation of cash found as per cash balances in cash books of various group concerns cannot be rejected merely on the ground that cash found from bank locker. In the context of purchase bills for the current year i.e., financial year 2010-11, it is seen that all the bills are prior to search except one bill of 85.015 gm of gold jewellery dated 21/03/2011. In any case, all the payments have been made by the assessee and her husband through banking channels and are verifiable. The assessee has argued that the genuineness of the bills of financial year 2010-11 cannot be doubted since the bills were produced by the assessee before the authorized officer, Assistant Director of Investigation-II, Bangalore, during income tax search. The assessee has submitted copy of statement under section 132(4) and made reference to assessee's answer to questions no.2, 3 & 12 in which the assessee can be seen submitting copies of the purchase bills before the Authorized Officer. It appears that the

Authorized Officer was also satisfied with the evidence produced before him. The assessee has argued that out of total valuables found of ₹ 1,13,59,513, the Department had seized valuables of ₹ 30,15,190 only. Purchase of gold in earlier years is shown in balance sheet of earlier years and Assessing Officer has not commented adversely on that. As regards the gift from brother in law, the assessee has submitted the relevant documents including statement of account, copy of return of Shri Purushottam Agrawal, gift deed etc. The gift received by assessee from brother-in-law is supported by gift deed, return of income and computation of income, capital account of donor etc., clearly specifies the quantity, rate, gold and silver gifted to assessee. The explanation cannot be rejected merely because it was not claimed during search. As regards difference in description, the assessee has argued that the silver items were subjected to conversion and the bill of conversion amounting ₹ 1,00,000, was paid to the jeweller. However, the argument of the assessee does not appear to be reasonable. The bill for purchase of silver weighing 53,227 gms. for the amount of ₹ 20,20,000 dated 16/10/2010. The bill of conversion from silver bar, silver coins is dated 17/03/2010. It is impossible to note here that silver bar purchased on 16/10/2010 can be converted into silver coins prior to its purchase. The conclusion and observation of the Assessing Officer in the remand report is upheld. The bill dated 16/10/2010 in respect of the silver bar (53227 gms) for the amount of ₹ 20,20,000 is held to be fictitious. The assessee, in her submission, dated 22/02/2016 has also relied upon CBDT circular No. 1916 dated 11/05/1994 and judgements to the effect that gold jewellery to the extent of 500 gms for

married lady, 250 gms for unmarried lady and 100 gms for male is acceptable as explained. The assessee has claimed that 950 gms of jewellery should be treated as explained in view of the CBDT circular referred above and in view of the decision of the Tribunal. In support of the arguments of the learned Authorised Representative for the assessee, the following case laws have been relied upon:-

i) Haroon Mohd. Unni v/s ITO, ITA no.463/Mum./2012) (Mum. Trib.);

ii) Ashok Chaddha v/s ITO, [2011] 202 Taxman 395 (Del.);

iii) DCIT v/s Arjundas Kalani [2006] 102 TTJ 977;

iv) Smt. Meena Syal v/s ACIT, [1999] 70 ITD 62; and

v) Shri Kishanchand Uttamchandani v/s DCIT ITA no.77/Mum./2007 (Mum.Trib.).

15. The CBDT Instruction no, 1916 dated 11/05/1994 lays down the guide lines for seizure of gold jewellery during search. It has been directed by the Board that in the case of a person not assessed to wealth tax, gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms unmarried lady, and 100 gms per male member of the family need not be seized. Reliance is also placed on the judgment of Chandigarh Bench of ITAT in the case of Smt. Neena Syal v/s ACIT (1999) 70 ITD 62 in which it has held that CBDT Instruction no.F.288/63/93 (Inv.)II dated 11/05/1992 containing guidelines or seizure of jewellery and ornaments in the course of search, is relevant with reference to the deeming provision of section 69A as well. In this Instruction, the possession of gold jewellery by married ladies upto 500 gms has been held to be immune from seizure. The Bench further held that

the possession of gold jewellery by married ladies to the extent of 500 gms should be considered as explained. The assessee has further, argued that several orders have been passed all over India by different Benches of the Tribunals accepting the possession of gold jewellery to the extent of 500 gms as explained.

16. In Shri Kishanchand Uttamchandani v/s DCIT, ITA no.77/Mum./2007, (ITAT Mum) the bench has held as follow:-

"We have carefully considered the submissions of Ld. Representatives of the parties and orders the authorities below as also CBDT Instruction No. 1916 dt.11.5.1994 and the decision cited by Ld. AR (Supra) On careful considerations of the said decisions of co ordinate Benches; we are of the Considered view that the intention of CBDT in issuing. the said instruction is that jewellery to the extent of 500 gms in the case of a married lady and 100 gms per male member should be treated as explained and need not be considered as unexplained investments."

17. The assessee has argued that decision of Co-ordinate Bench of the Tribunal, Chandigarh Bench, in Smt. Neena Syal was followed by Tribunal, Jodhpur Bench, in DCIT v/s Arjun Dass Kalwani, 111 ITD 337 and ITAT Ahmedabad Bench, in ITC v/s Manilal S. Dave, 70 TTJ 801.

18. A similar view has been taken by the Hon'ble Delhi High Court in Ashok Chaddha v/s ITO, in ITA No.274 of 2011 vide order dated 27/07/2011 and by the Co-ordinate Bench of the Tribunal, Mumbai Bench, in Haroon Mohd. Unni v/s ITO, ITA no.463/Mum./2012.

19. Considering the arguments of the assessee and the case laws relied upon, gold jewellery to the extent of 500 gms in the hands of the married lady, 250 gms in the hands of unmarried lady and 100 gms in the hands of

the assessee is considered as explained. Therefore, gold jewellery as under is held as explained.

<i>RajkumariAgrawal (Married lady)</i>	<i>500 grams</i>
<i>DivyaAgrawal (Unmarried girl)</i>	<i>100 grams</i>
<i>DharampalAgrawal (Married man)</i>	<i>250 grams</i>
<i>DarpanAgrawal (Unmarried man)</i>	<i>100 grams</i>
	<i>Total 950 grams</i>

The above valuation is based on the valuation certificate during the search in which silver was valued @ ₹ 52,000 per kg. and 84.14 carats of diamonds were valued at ₹ 21,01,720. In view of the above discussion, the reconciliation of the diamonds, gold and silver found in possession of the assessee and her family member are held as under:-

Sr. no.	Found			Held as Explained			
	Gold (gm)	Silver (kg.)	Diamond (kg.)		Gold (gm)	Silver (kg)	Diamond (crt)
1.	2167.15	60.291	84.12	1 Gift from Brother in law	842.35	11.000	
				Purchase in A.Y. 2011-12	379.47		67.28
				Purchase in A.Y	12.205		6.70
				Stree Dhan as per circular and case law	950		
<i>Total</i>	<i>2167.15</i>	<i>60.291</i>	<i>84.17</i>		<i>2184.025</i>	<i>11.000</i>	<i>23.980</i>

20. It is seen that silver of quantity 49,291 gms and diamond quantity 10.19 carats remains unexplained in assessee's hands. The jewellery purchased / held in the hands of assessee and her family members has been considered in assessee's case. The value of the unexplained valuables is as under:-

<i>Silver (49291 gms)</i>	<i>₹ 25,63,132</i>
<i>Diamond (10.19 carats)</i>	<i>₹ 2,54,443</i>
<i>Total</i>	<i>₹ 28,17,575</i>

Therefore, in view of the above, valuables amounting ₹ 28,17,575, are held as unexplained in hand. Therefore, the addition ₹ 1,16,09,513 made by the Assessing Officer in Para-5 & 6 of the assessment order is restricted to ₹ 28,17,575 by the learned CIT(A). The assessee being aggrieved by the impugned order so passed by the learned CIT(A) preferred further appeal before the Tribunal.

21. Before us, the learned Departmental Representative has strongly relied on the Assessing Officer's order and on the impugned order passed by the learned CIT(A) in respect of the issues confirmed by the learned CIT(A). The learned Departmental Representative raised strong objection that bills were not verified by the Assessing Officer or jeweller was not summoned and contended that this was not required as assessee himself has submitted bill.

22. In respect of additions deleted by learned CIT(A) amounting to ₹ 87,91,938, the learned CIT(A) had correctly deleted the addition of gold in light of CBDT Circular, supporting documents and various case laws and remand report of the Assessing Officer furnished by the assessee. All the documents were verified by the Assessing Officer during the remand proceedings and he had not produced any evidence in his remand report which is contrary to assessee submission. Thus, we find no reasons to deviate

from the impugned order passed by the learned CIT(A) in respect of addition of ₹ 87,91,938. Hence, the said addition is hereby deleted.

23. In respect of the addition of ₹ 1,16,09,513 restricted by the learned CIT(A) to ₹ 28,17,575, we are of the considered opinion that the Assessing Officer rejected the assessee's claim for the purchase of silver and diamonds based on an erroneous assumption regarding the bill date and it is undisputed fact that the Assessing Officer and the learned CIT(A) has not disputed the source of silver of ₹ 25,63,132 and payment of making charges ₹ 1,00,000. Also, there was no independent verification or corroborative evidence brought on record by the Assessing Officer to corroborate his claim. We observe that the payments for both the purchase of silver and conversion costs were made through proper banking channels. This jewellery was recorded in regular books of accounts of the assessee. This substantiates the legitimacy of the transactions. The clear trail of payments through banking transactions provides adequate support to the assessee's claim. The assessee has provided a satisfactory explanation regarding the source of the silver and diamonds. The silver was purchased from a registered jeweler for ₹ 25,63,132, supported by valid bill and payment through bank. Furthermore, the diamonds were received as part of streedhan (marital gifts) and amount of income generated over the years. The total diamond value is justifiable looking to returned income of assessee group. We find that the learned CIT(A) had verified this issue in details in light of CBDT Circular, supporting documents, findings in remand report etc. The assessee is in appeal before us against this addition of ₹ 28,17,575. We have deleted this addition in

assessee's appeal being ITA no.235/Nag./2016. We find this explanation satisfactory and conclude that the additions made are unsustainable. The addition made by the Assessing Officer at ₹ 28,17,575 for the purchase of silver and diamonds is hereby deleted. Thus, ground no.2, raised by the Revenue is dismissed.

24. Ground no.3, relates to the addition made on account of unexplained cash deposits of ₹ 4.15,040.

25. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The assessee is engaged in business of Metal and derived income from rent, insurance commission and agricultural income. The assessee has furnished complete details such as cash book, ledger account of rent and agricultural income, etc., before the Assessing Officer in the remand proceedings. The Assessing Officer has justified addition stating that no details were furnished during assessment and hence addition is justified. The Assessing Officer has not pointed out any deficiency / error in books of accounts and details submitted in remand proceedings. The Assessing Officer has not stated anything contrary to assessee's submission in his remand report. Therefore, we are of the considered opinion that these are genuine business receipts which are accounted for by the assessee in books of account and sources thereof are explained. It is held that the Assessing Officer was not justified in making addition of ₹ 4,15,040. Consequently, the addition of ₹ 4,15,040 is hereby directed to be deleted.

26. The Assessing Officer had accepted in his remand report that above cash deposit is recorded income in remand proceedings regular books of accounts and sources of the same is explained by the assessee. Considering the above findings, the issue doesn't require further discussion and the learned CIT(A) has correctly deleted the additions made by the Assessing Officer based on the remand report. Since this source of cash deposit of ₹ 4,15,040 is accepted by the Assessing Officer in his remand report, the addition deserves to be deleted. Thus, ground no.3, raised by the Revenue is dismissed.

27. Ground no.4, raised by the Revenue relates to the addition made on account of unexplained investment in the hands of the assessee at ₹ 27,17,000.

28. We have heard the rival arguments, perused the material available on record and gone through the order of the authorities below. It appears that the Assessing Officer has justified the addition in the remand report merely stating that since none of the details were submitted during assessment proceeding. However, the assessee submitted the relevant documents and evidence before the Assessing Officer in remand proceedings and the Assessing Officer has verified the same. The Assessing Officer stated that ₹21,00,000, was paid through Demand Draft and explained the source for purchase of pay order of ₹21,00,000 through cheque No.737909, from IndusInd Bank account. The balance payment of ₹5,00,000 and payment for stamp duty of ₹ 1,17,000, through cash was explained from the cash book.

Considering the assessee's submission and evidences and Assessing Officer's remand report, it is held that the addition was not justified. Therefore, the addition of ₹27,17,000 is held as unwarranted and is directed to be deleted. The Assessing Officer is accordingly directed.

29. The assessee has explained the source of investment in land of ₹ 27,17,000 to the satisfaction of the Assessing Officer in remand proceedings. The Assessing Officer had not given any contradictory finding in his remand report. Considering the above findings, the issue doesn't require further discussion and the learned CIT(A) has correctly deleted the additions made by the Assessing Officer based on the remand report. Thus, the addition of ₹ 27,17,000 is deleted as the assessee has explained the source of investment in land. Thus, ground no.4, raised by the Revenue is dismissed.

30. Ground no.5, raised by the Revenue relates to the addition made on account of undisclosed sales of ₹ 29,02,116.

31. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The assessee was engaged in the business of stone crushing and also derived income from rent. The assessee owns shops and flat which were let out by the assessee. The assessee has submitted that the sundry debtors reflecting in the Balance Sheet are the list of tenants from whom rent was recoverable. In this regard, the assessee has submitted various documents such as ledger account of sundry debtors, list of tenants etc., which were also verified by the Assessing Officer in the remand proceedings. The Assessing Officer has justified the

addition merely on the basis that the details were not submitted by the assessee during the assessment proceedings. In the remand report, however, the Assessing Officer has stated that assessee's submission and documents including ledger accounts have been verified and found to be correct. The Assessing Officer has stated that it was claimed by the assessee that the seized document contained the name of Smt. Rekha Padole which is related to the transaction of purchase of agricultural land. This was found to be correct. The assessee has stated in the submission that the assessee had given advance of ₹ 21,00,000, to Smt. Rekha Padole for purchase of land and her name is included in the list as per the seized documents. The Assessing Officer has not pointed out any deficiency/error in the books of accounts of the assessee.

32. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We noticed that the transactions were reflected in the books of accounts and the Assessing Officer was not justified in making addition of ₹ 29,02,116. The Assessing Officer has accepted in his remand report that the said transaction is related to purchase of agricultural land and is recorded in regular books of accounts. This is not related to undisclosed sales of the assessee. Considering the above findings, the issue does not require further discussion and the learned CIT(A) has correctly deleted the additions made by the Assessing Officer which is based on the remand report. Consequently, the addition of ₹ 29,02,116 is directed to be deleted. Thus, ground no.5, raised by the Revenue is dismissed.

33. Ground no.6, raised by the Revenue relates to the addition made on account of unexplained cash deposits of ₹ 5,50,000.

We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The assessee is engaged in business of stone crusher and derived income from rent. The addition has been made by the Assessing Officer since there were cash deposits in the bank account and no explanation was available from the assessee. In the remand report, the Assessing Officer has justified the addition merely on the basis that the details were not submitted by the assessee during the assessment proceedings. However, in remand proceedings, the assessee has furnished relevant details such as cash book, ledger account of rent and agricultural income, etc., before the Assessing Officer. The Assessing Officer has stated in the remand report that the assessee filed of cash book and bank statements in which the of cash deposits of ₹ 5,50,000, was explained. Considering the facts in the case, it is held that these are genuine business receipts which are accounted for in books of account and sources thereof are explained. The Assessing Officer had accepted in his remand report that the assessee has filed copies of cash book and bank statement and income earned in which the source of cash deposit of ₹ 5,50,000/- was explained. Considering the above findings, the issue does not require further discussion and the learned CIT(A) has correctly deleted the additions made by the Assessing Officer which is based on the remand report. Since this source of cash deposit of ₹ 5,50,000 is accepted by

Assessing Officer in his remand report, the addition deserves to be deleted. Consequently, in light of the above facts, evidence on record and the reasoning provided by the learned CIT(A), we are inclined to agree with their decision and uphold the learned CIT(A)'s order in the present matter. The learned CIT(A) has appropriately addressed the issues raised by the Assessing Officer with respect to grounds no.1, 3, 4 and 5. After thoroughly reviewing the case, we are of the considered view that the learned CIT(A) has correctly deleted the additions made by the Assessing Officer and nothing warrants us interfere with his decisions. Under these circumstances, we hold that the Assessing Officer was not justified to make addition of ₹ 5,50,000. Consequently, the addition of ₹ 5,50,000, is directed to be deleted. Thus, ground no.6, raised by the Revenue is dismissed.

34. Regarding ground no.2, raised by the Revenue relating to the addition made by the Assessing Officer on account of purchase of cash, gold/diamond jewellery and silver articles found during search is deleted by us as aforesaid. The Revenue has challenged part relief granted by the learned CIT(A). Since the addition so sustained, has been separately assailed by the assessee in its appeal being ITA no.235/Nag./2016. Presently, adjudication of this ground is academic in nature.

35. In the result, Revenue's appeal is dismissed.

ITA no.235/Nag./2016
Assessee's Appeal – A.Y. 2011-12

36. Following grounds have been raised by the assessee:–

"1. On the facts and in the circumstances of the case, Learned CIT(A) erred in maintaining addition of Rs.28.17,575/- made by the AO on account of unexplained investment in silver & diamond.

2. On the facts and in the circumstances of the case, Learned CIT(A) erred in maintaining addition of Rs.5,00,435/- made by AO as undisclosed income from House Property.

3. Any other ground of appeal that may be raised at the time of hearing of the appeal."

37. In this case, the assessee, for the year under consideration, filed its return of income on 29/09/2011, under section 139(1) of the Income Tax Act, 1961 ("*the Act*") disclosing total income of ₹ 15,03,450 and agricultural income of ₹ 10,24,687. The return of income was processed by the Assessing Officer under section 143(3) determining the total income at ₹ 7,66,34,420, and the assessment order dated 12/03/2013, was passed accordingly. The assessee being aggrieved by the assessment order so passed by the Assessing Officer, filed appeal before the first appellate authority.

38. On appeal, the learned CIT(A) deleted the following additions: –

	<i>Particulars</i>	<i>Original Addition made by the A.O.</i>	<i>Addition Sustained / deleted by the CIT(A)</i>
	<i>Returned Income</i>	<i>15,03,450</i>	<i>Deleted</i>
<i>Add:</i>	<i>Unexplained cash & valuables</i>	<i>1,15,09,513</i>	<i>28,17,575</i>
	<i>Unexplained cash deposits</i>	<i>4,15,040</i>	<i>Deleted</i>
	<i>Unexplained investment in land</i>	<i>27,17,000</i>	<i>Deleted</i>
	<i>Unexplained rent</i>	<i>16,49,620</i>	<i>5,00,435</i>
	<i>Unaccounted investment</i>	<i>5,52,87,300</i>	<i>Deleted</i>
	<i>Unaccounted sales</i>	<i>29,02,116</i>	<i>Deleted</i>
	<i>Unexplained cash deposits</i>	<i>5,50,000</i>	<i>Deleted</i>
	<i>Total:</i>	<i>7,66,34,039</i>	<i>33,18,010</i>

39. The Assessing Officer has made the addition for gold ornaments, silver articles, etc., found in bank locker and cash worth ₹ 50,47,355 and addition for gold ornaments, silver articles found at residence worth ₹ 65,62,158. Both these additions were in respect of gold and silver jewellery found during search from the bedroom of the assessee and from the bank locker. The additions were made substantively in the hands of the assessee stating that the assessee's submission lacks supporting evidence.

40. The learned CIT(A)'s findings with regards to the above additions given in Para-16 of the impugned order is reproduced herein below:-

"16. The gold purchased in earlier years is shown in balance sheet of earlier years and AO has not commented adversely on that. As regards the gift from brother in law, the assessee has submitted the relevant documents including statement of account, copy of return of Shri Purushottam Agrawal, gift deed etc. The gift received by assessee from brother-in-law is supported by Gift Deed, Return and computation of income, capital account of donor etc. deed clearly specifies the quantity, rate, gold and silver gifted to assessee. The explanation cannot be rejected merely because it was not claimed during search. As regards difference in description, the assessee has argued that the silver items were subjected to conversion and the bill of conversion amounting Rs 1,00,000/- was paid to the jeweller. However, the argument of the assessee does not appear to be reasonable. The bill for purchase of silver weighing 53227 gms for the amount of Rs.20,20,000/- dated 16.10.2010. The bill of conversion from silver bar, silver coins) is dated 17.03.2010. It is an impossibility that silver bar purchase on 16.10.2010 can be converted into silver coins prior to its purchase. The conclusion and observation of the AO in the remand report is upheld. The bill dated 16.10.2010 in respect of the silver bar (53227 gms) for the amount of Rs. 20,20,000/- is held to be fictitious."

41. The assessee, in her submission, dated 22/02/2016, has also relied upon CBDT circular No. 1916 dated 11/05/1994 and case laws to the effect that gold jewellery to the extent of 500 gms for married lady, 250 gms for unmarried lady and 100 gms for male is acceptable as explained. The assessee has claimed that 950 gms of jewellery should be treated as

explained in view of the CBDT circular referred to above and the case laws of the Tribunal. The assessee has relied upon the following case laws:-

- i) Haroon Mohd. Unni v/s ITO, ITA no.463/Mum./2012) (Mum. Trib.);*
- ii) Ashok Chaddha v/s ITO, [2011] 202 Taxman 395 (Del.);*
- iii) DCIT v/s Arjundas Kalani [2006] 102 TTJ 977;*
- iv) Smt. Meena Syal v/s ACIT, [1999] 70 ITD 62; and*
- v) Shri Kishanchand Uttamchandani v/s Dy. Commissioner of Income Tax, ITAno.77/Mum./2007 (Mum.Trib.).*

42. The CBDT Instruction no, 1916 dated 11/05/1994 lays down the guide lines for seizure of gold jewellery during search. It has been directed by the Board that in the case of a person not assessed to wealth tax, gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms unmarried lady, and 100 gms per male member of the family need not be seized. Reliance is also placed on the judgment of Chandigarh Bench of ITAT in the case of Smt. Neena Syal v/s ACIT (1999) 70 ITD 62 in which it has held that CBDT Instruction no.F.288/63/93 (Inv.)II dated 11/05/1992 containing guidelines or seizure of jewellery and ornaments in the course of search, is relevant with reference to the deeming provision of section 69A as well. In this Instruction, the possession of gold jewellery by married ladies upto 500 gms has been held to be immune from seizure. The Bench further held that the possession of gold jewellery by married ladies to the extent of 500 gms should be considered as explained. The assessee has further, argued that several orders have been passed all over India by different Benches of the

Tribunals accepting the possession of gold jewellery to the extent of 500 gms as explained.

43. In Shri Kishanchand Uttamchandani v/s DCIT, ITA no.77/Mum./2007, (ITAT Mum) the bench has held as follow:–

"We have carefully considered the submissions of Ld. Representatives of the parties and orders the authorities below as also CBDT Instruction No. 1916 dt.11.5.1994 and the decision cited by Ld. AR (Supra) On careful considerations of the said decisions of co ordinate Benches; we are of the Considered view that the intention of CBDT in issuing. the said instruction is that jewellery to the extent of 500 gms in the case of a married lady and 100 gms per male member should be treated as explained and need not be considered as unexplained investments."

44. The assessee has argued that decision of Co-ordinate Bench of the Tribunal, Chandigarh Bench, in Smt. Neena Syal was followed by Tribunal, Jodhpur Bench, in DCIT v/s Arjun Dass Kalwani, 111 ITD 337 and ITAT Ahmedabad Bench, in ITC v/s Manilal S. Dave, 70 TTJ 801.

45. A similar view has been taken by the Hon'ble Delhi High Court in Ashok Chaddha v/s ITO, in ITA No.274 of 2011 vide order dated 27/07/2011 and by the Co-ordinate Bench of the Tribunal, Mumbai Bench, in Haroon Mohd. Unni v/s ITO, ITA no.463/Mum./2012.

46. Considering the arguments of the assessee and the case laws relied upon, gold jewellery to the extent of 500 gms in the hands of the married lady, 250 gms in the hands of unmarried lady and 100 gms in the hands of the assessee is considered as explained. Therefore, gold jewellery as under is held as explained.

Smt. Rajkumari Dharampal Agarwal
ITAno.235/Nag./2016
ITAno.289/Nag./2016

RajkumariAgrawal (Married lady)	500 grams
DivyaAgrawal (Unmarried girl)	100 grams
DharampalAgrawal (Married man)	250 grams
DarpanAgrawal (Unmarried man)	100 grams
Total	950 grams

The above valuation is based on the valuation certificate during the search in which silver was valued @ ₹ 52,000 per kg. and 84.14 carats of diamonds were valued at ₹ 21,01,720. In view of the above discussion, the reconciliation of the diamonds, gold and silver found in possession of the assessee and her family member are held as under:-

Sr. no.	Found			Held as Explained			
	Gold (gm)	Silver (kg.)	Diamond (kg.)		Gold (gm)	Silver (kg)	Diamond (crt)
1.	2167.15	60.291	84.12	1 Gift from Brother in law	842.35	11.000	
				Purchase in A.Y. 2011-12	379.47		67.28
				Purchase in A.Y	12.205		6.70
				StreeDhan as per circular and case law	950		
Total	2167.15	60.291	84.17		2184.025	11.000	23.980

47. It is seen that silver of quantity 49,291 gms and diamond quantity 10.19 carats remains unexplained in assessee's hands. The jewellery purchased / held in the hands of assessee and her family members has been considered in assessee's case. The value of the unexplained valuables is as under:-

Silver (49291 gms)	₹ 25,63,132
Diamond (10.19 carats)	₹ 2,54,443
Total	₹ 28,17,575

48. The above valuation is based on the valuation certificate during the search in which silver was valued @ ₹ 52,000 per kg. and 84.14 carats of diamonds were valued at ₹ 21,01,720. In view of the above, valuables amounting ₹ 28,17,575, are held as unexplained in the hands of the assessee. Accordingly, the addition ₹ 1,16,09,513 made by the Assessing Officer in Para-5 & 6 of the assessment order was restricted to ₹ 28,17,575 by the learned CIT(A). The assessee being aggrieved by the impugned order passed by the learned CIT(A), preferred further appeal before the Tribunal.

49. During the course of the hearing before us, the learned Authorised Representative for the assessee for the assessee submitted that the jeweller's making charges bill was erroneously dated 17/03/2010 instead of 17/03/2011, with an overwriting on the date. The Assessing Officer rejected the claim citing the impossibility of conversion before the purchase date due to the incorrect date on the bill and lack of description of the manufactured items. However, the Assessing Officer did not dispute the purchase of 53,227 grams of silver amounting to ₹ 17,17,575 from the same jeweller. The payments for the purchase and making charges were made through banking channels, which were neither disputed by the Assessing Officer nor by the learned CIT(A). The silver purchase was already accounted for in the assessee's books of accounts, and was no undisclosed transaction. The assessee submitted a duplicate copy of the original bill dated 17/03/2011 before the learned CIT(A), but the Assessing Officer ignored it and failed to conduct any further inquiry in remand proceedings or summoned the jeweller

for verification. The payment of making charges was made subsequent to the date of purchase of silver. Copy of Bank statement highlighting the said payment is enclosed in paper book. This corroborates the assessee's contention that correct invoice bill date is 17/03/2011. Mere over writing due to inadvertence cannot destroy credibility of unimpeachable evidence. Given that the source of silver is explained and the source of payment is not disputed by the Assessing Officer or the learned CIT(A), the addition was made solely due to an error in the bill date. Hence, this addition deserves to be deleted.

50. Insofar as diamonds worth ₹ 2,54,443, is concerned, the assessee's family (4 members) had declared an income of ₹ 4.46 crore over the last six years. The assessee had received Stree-dhan on marriage from her parents and in-laws. The assessee explained the sources of gold and silver worth ₹ 1.16 crore before the Assessing Officer and the learned CIT(A), with supporting purchase bills, gift deeds, and bank statements. The gold jewellery was fully accepted by the learned CIT(A), while silver was partly added due to the discrepancy in bill date. The diamonds found in search, valued at ₹ 2,54,443, were minimal considering the financial status of the assessee and her family. Given the difficulty of preserving small bills for diamond purchases over 30 years, this small quantity cannot be termed as undisclosed or unexplained in the light of the factual gamut.

51. Insofar as undisclosed rent of ₹ 5,00,435 is concerned, the assessee owned various flats and shops at Agrawal Market, Indore. These shops and

flat were rented out by assessee. The shops and flats were acquired more than twenty five (25) years ago. The same are reflecting in Balance Sheet of assessee under Fixed Asset Schedule. During the search and seizure operation, the Assessing Officer had seized list of shops in which rent income from each shop per month was mentioned. The Assessing Officer had assumed that all shops and flats were fully occupied in relevant previous year i.e., twelve months and calculated the annual rent income which comes to ₹ 16,49,620. It is respectively submitted that the Assessing Officer has made this addition on fictitious basis. There were many tenants who had not paid rent for several years due to litigation. There were other tenants who had taken illegal possession and were in dispute with assessee. During the financial year the assessee had offered to tax actual rent income received of ₹ 8,78,392. In this regard the assessee has submitted the ledger account of lease rent which was also verified by the Assessing Officer. The addition is thus merely based on conjectures and surmises.

52. The learned Departmental Representative strongly relied on the impugned order passed by the learned CIT(A) in respect of the issues confirmed by the learned CIT(A). The learned Departmental Representative raised strong objection that bills were not verified by the Assessing Officer or jeweller was not summoned. The learned D.R. contended that this was not required as the assessee himself has submitted the bill.

53. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We find that

the Assessing Officer rejected the assessee's claim for the purchase of silver and diamonds based on an erroneous assumption regarding the bill date and it is undisputed fact that the Assessing Officer and the learned CIT(A) has not disputed the source of silver worth ₹ 25,63,132 and payment of making charges ₹ 1,00,000. Also, there was no independent verification by the Assessing Officer to corroborate his claim. We observe that the payments for both the purchase of silver and conversion costs were made through proper banking channels. This substantiates the legitimacy of the transactions. The clear trail of payments through banking transactions provides adequate support to the assessee's claim and the same is clinching in nature. The assessee has provided a satisfactory explanation regarding the source of the silver and diamonds. The silver was purchased from a registered jeweler for ₹ 25,63,132, supported by valid bill and payment through bank. Furthermore, the diamonds were received as part of stree-dhan (marriage gifts) and can be satisfactorily explained in the back drop of amount of income generated over the years. We further find this explanation satisfactory and plausible. Hence, we hold that the additions made are unsustainable towards unexplained investment to the tune of ₹ 28,17,575.

54. With regard to the addition on account of rent of ₹ 5,00,435, the said addition made by the Assessing Officer was based on seized document. The onus to prove that the actual rent received was lower than maintained in seized document lies entirely with the assessee. The assessee had failed to prove that the rent as per seized documents was not received. Thus, the

addition is sustained. However, statutory deductions under section 24 of the Act to the extent of @ 30% need to be allowed as a natural corollary. In the light of the above findings, we order as under:-

- i) The addition made by the Assessing Officer on account of purchase of silver and diamonds is hereby deleted in full; and
- ii) The addition on account of undisclosed rent income of ₹ 5,00,435, is hereby sustained to the extent of @ 70% and the addition is scaled down to ₹ 3,50,305 only.

55. Consequently, the grounds raised by the assessee are partly allowed.

56. In the result, assessee's appeal stands partly allowed.

57. To sum up, Revenue's appeal is dismissed and assessee's appeal is partly allowed.

Order pronounced in the open Court on 15/05/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 15/05/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur