

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.604/SRT/2024

(Assessment year:2019-20)

(Hybrid Hearing)

ACIT, Central Circle – 2, Surat	Vs.	M/s Janani Exports, 704, Vastu Slip Apt., 7 th Floor, Nr. Parsi Colony, Pump House, Andheri (E), Mumbai - 400093
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFJ3969P		
(Appellant)		(Respondent)

IT(SS)A Nos.9, 10 & 19/SRT/2024

(AYs:2013-14, 2014-15 & 2018-19)

ACIT, Central Circle – 2, Surat	Vs.	M/s Janani Exports, 704, Vastu Slip Apt., 7 th Floor, Nr. Parsi Colony, Pump House, Andheri (E), Mumbai - 400093
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFJ3969P		
(Appellant)		(Respondent)

IT(SS)A Nos.20 to 22/SRT/2024

(AYs: 2013-14 to 2015-16)

M/s Janani Exports, 704, Vastu Slip Apt., 7 th Floor, Nr. Parsi Colony, Pump House, Andheri (E), Mumbai - 400093	Vs.	ACIT, Central Circle – 2, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFJ3969P		
(Appellant)		(Respondent)

IT(SS)A Nos.35 to 38/SRT/2024

(AYs: 2016-17 to 2019-20)

M/s Janani Exports, 704, Vastu Slip Apt., 7 th Floor, Nr. Parsi Colony, Pump House, Andheri (E), Mumbai - 400093	Vs.	ACIT, Central Circle – 2, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFJ3969P		
(Appellant)		(Respondent)

Appellant by	Shri Ravinder Sindhu, CIT(DR) with Shri Ajay Uke, Sr. DR
Respondent by	Shri Rasesh Shah, CA
Date of Hearing	21/07/2025
Date of Pronouncement	31/07/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These eleven cross-appeals emanate from the separate orders passed by the learned Commissioner of Income-tax (Appeals) - 4, Surat [in short “the CIT(A)”] for the assessment years (AYs) 2013-14 to 2019-20. Since the facts are common and grounds of appeal are almost identical except variance of amounts, with the consent of both parties, all these appeals were clubbed and heard together and are decided by this consolidated order for sake of convenience and brevity.

2. The grounds of appeal raised by the revenue in IT(SS)A No.9/SRT/2024 (AY.2013-14) are as follows:

“1) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricted the addition to Rs.1,20,31,993/- as against the total addition of Rs.2,99,51,734/- made by the AO towards profit on unaccounted trading activities applying the rate of profit @2.5% despite the facts that the assessee itself declared the GP in the range of 4.1% to 5.46%, average rate of GP is 4.51% over a span of 7 assessment years i.e., from A.Y.2013-14 to A.Y.2019-20 and without appreciating the facts that the natural outcome of sale outside books of accounts always greater profit margins in comparison to the sale as per the books of accounts

2) In addition to the ground no.1, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricted the addition to Rs.1,20,31,893/- as against the total addition of Rs.2,99,51,734/ made by the AO towards profit on unaccounted trading activities applying the rate of profit @2.5% observing that the net profit disclosed in the regular books can be considered as the reference point for arriving at reasonable rate to be adopted for working out quantum of unaccounted income despite the facts that the assessee has already

claimed the undirected expenses in the P&L account and there are no evidences that the assessee has incurred additional indirect expenses.

3) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.3,40,67,103/- made by the AO as unexplained money as initial capital without appreciating the fact that the AO had properly calculated the capital required to undertake the out of books purchase transaction.

4) On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

5) It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.

6) The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made.”

3. The grounds of appeal by assessee in IT(SS)A No.20/SRT/2024 (AY.2013-14) are as follows:

“1. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in adopting a Net Profit (NP) Rate of 2.5% on the unaccounted purchase instead of adopting the actual NP Rate of the appellant firm for the year under consideration being 1.37% or the average NP Rate of the block period being 1.34%.

2. The appellant firm craves to add, amend, alter, substitute, modify the above ground of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

4. The grounds of appeal by revenue in IT(SS)A No.10/SRT/2024 (AY.2014-15) are as follows:

“1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricted the addition to Rs.1,32,54,989/- as against the total addition of Rs.3,29,96,237/-made by the AO towards profit on unaccounted trading activities applying the rate of profit @2.5% despite the facts that the assessee itself declared the GP in the range of 4.26% to 4.79%, average rate of GP is 4.51% over a span of 7 assessment years i.e. form A.Y.2013-14 to A.Y. 2019-20 and without appreciating the facts that the natural outcome of sale outside books of accounts always greater profit margins in comparison to the sale as per the books of accounts.

2. In addition to the ground no.1, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the addition to Rs.1,32,54,989/- as against the total addition of Rs 3,29,96,237/- made by the AO towards profit on unaccounted trading activities applying the rate of profit @2.5% observing that the net profit disclosed in the regular books can be considered as the reference point for arriving at reasonable rate to be adopted for working out quantum of unaccounted income despite the facts that the assessee has already claimed the undirected expenses in the P&L account and there are no evidences that the assessee has incurred additional indirect expenses.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

4. It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.

5. The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made”

5. The grounds of appeal by revenue in IT(SS)A No.19/SRT/2024 (AY.2018-19) are as follows:

“1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the addition to Rs.2,05,67,774/- as against the total addition of Rs.5,12,00,629/- made by the AO towards profit on unaccounted trading activities applying the rate of profit @2.5% despite the facts that the assessee itself declared the GP in the range of 4.26% to 4.79%, average rate of GP is 4.51% over a span of 7 assessment years i.e, from A.Y.2013-14 to A.Y. 2019-20 and without appreciating the facts that the natural outcome of sale outside books of accounts always greater profit margins in comparison to the sale as per the books of accounts.

2. In addition to the ground no.1, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the addition to Rs.2,05,67,774/- as against the total addition of Rs.5,12,00,629/-made by the AO towards profit on unaccounted trading activities applying the rate of profit @2.5% observing that the net profit disclosed in the regular books can be considered as the reference point for arriving at reasonable rate to be adopted for working out quantum of unaccounted income despite the facts that the assessee has already claimed the undirected expenses in the P&L account and there are no evidences that the assessee has incurred additional indirect expenses.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.68,000/- made by the AO on account of undisclosed interest income earned by the assessee on loan amount of Rs. 40,00,000/- at the interest rate of 1% per month for the time period of 51 days observing that there is no corroborative evidences brought on record by the AO suggesting that the entry recorded represents unaccounted loan and

advance despite the facts that the addition has been made on the basis of incriminating details/document recovered during the search proceedings and granted relief to the assessee de-horse provisions of section 292C of the Assessee.”

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

5. It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.

6. The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made.”

6. The grounds of appeal by revenue in ITA No.604/SRT/2024 (AY.2019-20)

are as follows:

“1. On the facts and in the circumstances of the case and in law the Ld CIT(A) erred in restricting the addition to Rs 85,13,738/- as against the total addition of Rs.2,04,32,972/- made by the AO towards profit on unaccounted trading activities applying the rate of profit @2.5% as against rate of profit of 6% applied by the AO despite the facts that the assessee itself declared the GP in the range of 4.26% to 4.79%, average rate of GP is 4.51% over a span of 7 assessment years i.e. form A.Y.2013-14 to A.Y. 2019-20 and without appreciating the facts that the natural outcome of sale outside books of accounts always greater profit margins in comparison to the sale as per the books of accounts.

2. In addition to the ground no.1, on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricted the addition to Rs.85,13,738/- against the total addition of Rs.2,04,32,972/- made by the AO towards profit on unaccounted trading activities applying the rate of profit @2.5% as against rate of profit of 6% applied by the AO observing that the net profit disclosed in the regular books can be considered as the reference point for arriving at reasonable rate to be adopted for working out quantum of unaccounted income despite the facts that the assessee has already claimed the undirected expenses in the P&L account and there are no evidences that the assessee has incurred additional indirect expenses.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.8,11,34,554/-made by the AO on account of excess stock found during the course of the search proceedings despite the facts that addition has been made on the basis of valuation of stock of diamonds recovered during the search proceedings and the assessee has failed to prove that the excess stock of diamonds found during the course of search proceedings was pertains to the diamonds received for sale on Jangad (Unaccounted) basis with evidences of inwards and outwards of such diamonds

4. On the facts and in the circumstances of the case and in law the Ld CIT(A) erred in restricting the addition of ₹69,41,107/- to ₹3,25,371/- made by the AO on account of excess cash found during the course of the search proceedings despite the facts that addition has been made on the basis of actual cash recovered during the search proceedings and the assessee has failed to prove the source of such excess cash found during the course of search proceedings.

5. In addition to the ground no. 5 above on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the addition of Rs.69,41,107/- to Rs.3,25,371/- made by the AO on account of excess cash found during the course of the search proceedings granting the set off of the cash balance available with various seven persons.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

7. It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.

8. The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made.”

7. The grounds of appeal by assessee in IT(SS)A No.21/SRT/2024 (AY.2014-15) are as follows:

“1. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in adopting a Net Profit (NP) Rate of 2.5% on the unaccounted purchase instead of adopting the actual NP Rate of the appellant firm for the year under consideration being 1.21% or the average NP Rate of the block period being 1.34%.

2. The appellant firm craves to add, amend, alter, substitute, modify the above ground of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing

8. The grounds of appeal by assessee in IT(SS)A No.22/SRT/2024 (AY.2015-16) are as follows:

“1. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in adopting a Net Profit (NP) Rate of 2.5% on the unaccounted purchase instead of adopting the actual NP Rate of the appellant firm for the year under consideration being 1.21% or the average NP Rate of the block period being 1.34%.

2. The appellant firm craves to add, amend, alter, substitute, modify the above ground of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

9. The grounds of appeal by assessee in IT(SS)A No.35/SRT/2024 (AY.2016-17) are as follows:

“1. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in adopting a Net Profit (NP) Rate of 2.5% on the unaccounted sale instead of adopting the actual NP Rate of the appellant firm for the year under consideration being 1.37% or the average NP Rate of the block period being 1.34%.

2. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in computing the amount of undisclosed investment of the appellant firm in purchase of machinery at Rs.10,50,000/-, instead of Rs.7,25,000/-, which needs to be corrected, though no separate addition has been made for the same since the said investment has been telescoped against the addition of estimated profit.

3. The appellant firm craves to add, amend, alter, substitute, modify the above ground of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

10. The grounds of appeal by assessee in IT(SS)A No.36/SRT/2024 (AY.2017-18) are as follows:

“1. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in adopting a Net Profit (NP) Rate of 2.5% on the unaccounted purchase instead of adopting the actual NP Rate of the appellant firm for the year under consideration being 1.54% or the average NP Rate of the block period being 1.34%.

2. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in holding that the ground of appeal as regards the initiation of penalty u/s. 269ST by the learned AO in the assessment order is prematured and thereby dismissing the same which is absolutely erroneous, incorrect, illegal and bad in law.

3. The appellant firm craves to add, amend, alter, substitute, modify the above ground of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

11. The grounds of appeal by assessee in IT(SS)A No.37/SRT/2024 (AY.2018-19) are as follows:

“1. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in adopting a Net Profit (NP) rate of 2.5% on the unaccounted purchase instead of adopting the actual NP Rate of the appellant firm for the year under consideration being 1.51% or the average NP rate of the block period being 1.34%.

2. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in upholding the action of the learned AO of not excluding the amount of goods return of Rs.3,87,81,000/- while computing amount of unaccounted purchases to estimate the profit thereon without appreciating the fact that seized material itself evidences that goods were returned due to cancellation of deal and hence, the same needs to be excluded while computing the amount of unaccounted purchase for the purpose of estimating the profit thereon.

3. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in holding that the ground of appeal as regards the initiation of penalty u/s. 269ST by the learned AO in the assessment order is prematured and thereby dismissing the same which is absolutely erroneous, Incorrect, illegal and bad in law.

4. The appellant firm craves to add, amend, alter, substitute, modify the above ground of appeal, If necessary, on the basis of submissions to be made at the time of personal hearing.”

12. The grounds of appeal by assessee in IT(SS)A No.38/SRT/2024 (AY.2019-20) are as follows:

“1. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in adopting a Net Profit (NP) Rate of 2.5% on the unaccounted sale instead of adopting the actual NP Rate of the appellant firm for the year under consideration being 1.13% or the average NP Rate of the block period being 1.34%.

2. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in upholding the action of the learned AO of not excluding the amount of goods return of Rs.1,57,19,000/- while computing amount of unaccounted sale to estimate the profit thereon without appreciating the fact that seized material itself evidences that goods were returned due to cancellation of deal and hence, the same needs to be excluded while computing the amount of unaccounted sale for the purpose of estimating the profit thereon.

3. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in upholding the cash of Rs.3,25,371/ as unexplained, out of the total cash found during the course of search, though no separate addition has been made for the same since it has been telescoped against the addition of estimated profit, which is absolutely erroneous, incorrect, illegal and bad in law.

4. On facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in holding that the ground of appeal as regards the initiation of penalty u/s. 269ST by the learned AO in the assessment order is prematured and thereby dismissing the same which is absolutely erroneous, incorrect, illegal and bad in law.

5. The appellant firm craves to add, amend, alter, substitute, modify the above ground of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

13. The appellant has raised additional grounds of appeal in IT(SS)A No. 20/SRT/2024 (AY.2013-14) for the first time before the Tribunal, which is as under:

“On the facts and circumstances of the case as well as the law on the subject, the Id. Jt. Commissioner of Income Tax has erred in giving mechanical approval u/s 153D of the Act.”

13.1 Let us first decide the admissibility of additional ground with regard to validity of approval u/s 153D of the Act. The appellant submitted that the additional ground may be admitted in the interest of natural justice, equity and fair play because its omission in the main grounds of appeal in Form 36 was purely unintentional. We find that the additional ground of appeal raised by the assessee is purely legal in nature and, no additional fact are to be brought on record to adjudicate such issue. The facts relating to the adjudication of this issue can be ascertained from the body of the assessment order; hence, the additional ground of appeal raised by the assessee is admitted for adjudication. Reliance is also placed on the decisions of the Hon’ble Supreme Court in case of NTPC vs. CIT (229 ITR 383) and Jute Corporation of India Ltd. vs. CIT (187 ITR 688).

13.2 The learned Authorized Representative (Id. AR) for the assessee submitted that the JCIT has not applied his mind and has given mechanical approval u/s 153D of the Act to the order passed by the ACIT, CC – 2, Surat. We are unable to agree with the contention of the Id. AR. Requirement of approval

u/s 153D is prerequisite to pass assessment order u/s 153A or 153C. A careful reading of section 153A(1) and section 153D leaves no room for any doubt that approval for each assessment year is to be obtained by Assessing Officer (in short, 'AO') before passing assessment order. Such protection is given against any arbitrary and unjust exercise of power by AO. On careful perusal of assessment order, we find that there is reference of prior approval of JCIT Central Range, Surat dated 10.09.2021. The assessment order was thereafter passed on 18.09.2021. Thus, primarily, the prerequisite condition of prior approval seems to be fulfilled. Procedure for assessment under Chapter XIV covers Sections 139 to 158 of the Act. The special procedure for assessment of search case under Chapter XIV-B u/s 158B to BI for search and seizure action u/s 132 of the Act and requisition u/s 132A continued till 31st May, 2003. Subsequently, assessment in case of search or requisition is carried out u/s 153A, 153B, 153C and 153D of the Act. The procedure for assessment of search cases starts after centralization of cases by the PCIT/DGIT after the search and seizure action u/s 132 of the Act. The Investigation Wing prepares appraisal report after search based on seized material/statements during search proceedings and after post search investigation. Copy of appraisal report is given to the PCIT, Jt. CIT and AO. The seized materials, copy of panchanama, copy of statement etc. are handed over to the AO with whom the case is centralized. Accordingly, all related cases of the search group are handled by AO with the supervision and monitoring of the range head, i.e. the JCIT or Addl. CIT, as the case may be. Hence, the approving authority u/s 158D of the Act is

involved from the date of receipt of search report (Appraisal Report) and seized materials till finalization of assessment order. Since, the Addl.CIT/JCIT is involved at all stages of assessment including examination of seized records and issue of questionnaire, the approval date alone cannot be ground to hold that he had not applied his mind before granting approval. The entire seized material is always discussed by AO with the range head before passing the final assessment. We also find that in the present case the assessment order was approved by the JCIT on 10.09.2021 and the order u/s 153A of the Act was passed on 18.09.2021. Even otherwise, such objection was not raised before Id CIT(A). Hence, are not convinced with the argument of the Id. AR that the Jt. CIT granted approval in a mechanical manner. We are not inclined to set-aside the assessment order of AY.2013-14 on this ground alone. In the result, the additional ground of appeal raised by the appellant is rejected.

13.3 Similar additional grounds have been raised by appellant for other assessment years as well. They are admitted but dismissed for the reasons given above in ITA(SS)A No.20/SRT/2024 (AY.2013-14).

14. IT(SS)A No.9/SRT/2024 for AY.2013-14 is taken as the '**lead**' case. The facts of the case in brief are that the assessee e-filed its return of income for AY.2013-14 on 29.09.2013, declaring total income of Rs.91,31,600/-. The assessee was engaged in the business of manufacturing and trading of diamonds. A search and seizure operation was conducted u/s 132 of the Act on 28.06.2018 in case of M/s Janani Exports (appellant) and Savani group of Surat. The case of the appellant was centralized with the ACIT, Central Circle - 2, Surat

(AO), who issued notice u/s 153A of the Act on 02.06.2020. In reply, the assessee furnished its return of income on 30.07.2020, declaring total income of Rs.90,49,410/-. In response to the statutory and show cause notices, assessee filed various details which were considered by AO. As per the information gathered during the search, the assessee had indulged in unaccounted purchases and sales of rough and polished diamonds. The AO has discussed the modus operandi of the assessee at para 6 of the assessment order. He has noted that the gross profit rate and the net profit rate were in the range of 4.79% to 4.62% and 1.13% to 1.54% respectively for AYs.2013-14 to 2019-20. Various incriminating materials/documents were found from the premises of the assessee, indicating undisclosed and unaccounted purchases and sales of rough and polished diamonds by the assessee. Analysis of the details found from the seized material revealed that the unaccounted purchases and sales of diamonds were recorded in the "Diwali Hisab Book". The year-wise unaccounted purchase and sale as found from the seized records by the AO may be given below:

A.Y.	Unaccounted Purchase (Rs.)	Unaccounted Sales (Rs.)
2013-14	46,92,43,839	29,32,86,552
2014-15	51,69,41,040	31,25,18,707
2015-16	27,51,52,233	18,98,76,167
2016-17	15,93,85,728	28,59,77,527
2017-18	18,53,54,633	5,22,59,413
2018-19	80,21,43,189	73,67,94,315
2019-20	31,97,97,063	34,05,49,533

The digital and physical incriminating documents were confronted to the main partners as well as the accountant of the assessee-firm and their statements

were recorded u/s 132(4) of the Act. In reply, they confirmed having undertaken certain transactions of purchase and sale outside of the regular books of account. Thereafter, the AO rejected the books of account u/s 145(3) of the Act and estimated the gross profit (GP) rate at 6%. He found that the average GP rate of the seven AYs from 2013-14 to 2019-20 was 4.51%, with the lowest and highest being 4.26% and 4.79% respectively. He estimated the GP rate by enhancing the highest GP rate by 25% and applied uniform GP rate of 6% (i.e., 4.79% x 125%) for all AYs from 2013-14 to 2019-20. The excess profit estimated by AO for AY.2013-14 was Rs.2,99,51,734/-, which was added to the total income of the assessee.

14.1 The AO has also made another addition of Rs.3,40,67,103/-, being initial capital required for undertaking purchase and sale transactions outside the regular books of account. After finding that assessee had undertaken unaccounted transactions of purchase and sale of Rs.49,92,43,839/- and Rs.29,32,96,552/- respectively, he observed that to undertake these unaccounted transactions, assessee needed initial out-of-book capital as well. The opening stock to purchase ratio in regular books of account was 0.0726. The same ratio was applied on the unaccounted purchase of Rs.46,92,43,839/- and the resultant amount of Rs.3,40,67,103/- was held to be the initial unaccounted capital utilized by the assessee. Accordingly, Rs.3,40,67,103/- was added to total income as unexplained money for the AY.2013-14. The AO made another small addition of Rs.89,190/- and determined the total income at Rs.7,31,50,440/- as

against returned income of Rs.90,49,410/-. He also initiated penalty proceedings u/s 271(1)(c) of the Act.

15. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). Ground No.1 was regarding addition of Rs.2,99,51,734/- by adopting GP rate of 6% on unaccounted purchases instead of adopting the NP rate of 1.37%, declared by appellant in its regular accounts. Before the CIT(A), the assessee made detailed submission, which is extracted at para 6.1 of the appellate order. The appellant submitted that NP disclosed in the regular books of account should be applied in computing the profit on unaccounted transactions. It contended that the data on undisclosed transactions found during the search contain incomplete details of undisclosed purchases and sales. It also includes undisclosed expenses such as labour, salary, brokerage etc., which have not been considered by AO while adopting the GP ratio. The appellant also contended that most of the unaccounted purchases and sales were in respect of trading in rough diamonds, where the profit margin is about 1%. Considering the above facts, the correct method would be to apply NP rate instead of GP rate on the undisclosed transactions. The appellant also relied on various decisions of the Hon'ble Gujarat High Court and ITAT, Ahmedabad and Surat as well as some decisions of other Hon'ble High Courts and Tribunals, where NP rate was approved instead of GP rate. After considering the facts on record and the decisions relied upon by the appellant, the CIT(A) observed that the average NP rate as per the books of account during the AYs covered under the search was 1.30% and the maximum rate was 1.54%. Further, no evidences were found

showing any inflation of expenses in the regular books of account. Hence, NP rate disclosed in the regular books could be considered as the reference point for arriving at a reasonable rate to be adopted for working out the unaccounted income on the unrecorded transactions. The CIT(A) also referred to the report of the Task Force for diamond sector, which submitted that the NP rate in diamond manufacturing is in the range of 1.50% to 4.50%; and in trading activity, the NP rate was in the range of 1% to 3%. He, thereafter, held that 2.5% NP rate from unrecorded transaction was reasonable. Therefore, he restricted the addition to 2.5% of the undisclosed purchase, on the same methodology adopted by the AO in the assessment order. He has accordingly allowed relief of Rs.1,79,19,841/- out of total addition of Rs.2,99,51,734/-.

15.1 As regards the addition of unexplained initial capital of Rs.3,40,67,103/-, the CIT(A) has deleted the addition by observing that there was no seized/incriminating document for making such addition. The appellant had shown opening stock and purchases in the books of account and the said ratio has been applied by the AO to the unexplained purchases. However, in case of the appellant, the amount of outstanding sundry creditors for goods as on 01.04.2012, as per the regular books, was Rs.11,28,29,413/- as against opening stock of Rs.4,85,62,805/-. Therefore, the source of entire opening stock was explained by the sundry creditor and no unexplained capital was deployed. Further, in absence of any incriminating evidence, the addition on account of unexplained money for initial investment for unaccounted trading was deleted.

16. Aggrieved by the order of CIT(A), both revenue and assessee have filed appeals before the Tribunal. Ground Nos.1 and 2 of the revenue's appeal and Ground No.1 of assessee's appeal are inter-related. The revenue has challenged the deletion of addition by CIT(A) by adopting rate of profit at 2.5% instead of 6% adopted by the AO. The appellant, on the other hand, has contested the adoption of NP rate at 2.5% of the unaccounted purchase by the CIT(A) instead of adopting the actual NP rate of the year at 1.37% declared by the assessee or the average NP rate 1.34% for of the block period. The learned Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) has relied on the order of AO and submitted that the GP was rightly determined at 6% of the unaccounted turnover for each of assessment years from AY.2013-14 to AY.2019-20. He submitted that there would be higher profit margin on transactions outside the books of account because various expenses including taxes and duties would not be paid on unrecorded transactions.

17. On the other hand, the learned Authorized Representative (Id. AR) of the assessee supported the reasons given by the CIT(A) in estimating the income on NP rate basis. He, however, submitted that the profit rate should have been considered at 1.37%, which was the rate of NP shown by the assessee in its regular books of account. In the alternative, the average NP rate of the block period (1.34%) should have been applied on the unaccounted purchases.

18. We have heard both the parties and perused the materials available on record. We have also deliberated upon the decisions relied upon by both sides. A search and seizure action u/s 132 of the Act was conducted in case of the

assessee group on 28.06.2018. During the course of search, various incriminating materials were found which revealed that there were unaccounted purchases of Rs.46,92,43,839/- and unaccounted sales of Rs.29,32,86,552/-. The partners and the accountant also admitted that the appellant-firm carried out certain purchases and sales, which were not recorded in the regular books of account. The AO, for the reasons discussed in the facts of case stated above at para 14 adopted GP rate of 6%, being 25% more than the highest GP rate disclosed by the appellant in the books of account from AY 2013-14 to AY 2019-20. This rate of 6% has been uniformly applied for all AYs under consideration. We find that the details of some unaccounted purchases and sales were found from the seized Diwali Hishab Book and Lucky Software. There were wide differences in the value of purchases and sales in the seized record. The CIT(A) has observed that details of unaccounted expenses were also found during the search, which had been ignored by the AO. He further noted that major portion of the unaccounted transactions are related to trading in rough diamonds, where the profit margin is lower as compared to the NP rate in diamond manufacturing. He has also referred to the report of the Task Group for the diamond sector, which submitted that in manufacturing of diamond, the NP rate is 1.50% to 4.5% whereas the NP rate in trading of diamonds is 1% to 3%. He adopted 2.5% as the NP rate and allowed resultant relief to the assessee. The revenue has not contested the fact that the unaccounted transactions mainly relate to trading of rough diamonds and not manufacturing of diamonds by the appellant. The assessee has shown NP @1.37% for the year

under consideration. The Hon'ble Gujarat High Court and other Hon'ble High Courts and ITATs in the following cases have approved adoption of NP rate: (i) CIT vs. President Industries, 258 ITR 654 (Guj.), (ii) CIT vs. Abhishek Corporation, 158 CTR (Guj.) 374, (iii) ITO vs. Om Silk Mills, 55 taxmann.com 295 (Guj.), (iv) CIT vs. Balchand Ajitkumar, 263 ITR 610 (MP), (v) DCIT, CC-3, Surat vs. Mehul T. Desai, (2019) 101 taxmann.com 234 (Surat – Trib.), (vi) ITO vs. Sai Kripa Construction, (2007) 13 SOT 459 (Mum.) and (vii) Egel Seeds and Biotech Ltd. vs. ACIT, 100 ITD 301 (Indore – Trib.). Therefore, we are of the considered view that the CIT(A) has rightly adopted the NP rate instead of the GP rate applied by the AO.

18.1 Having held that the CIT(A) rightly applied NP rate on the unaccounted purchases, let us discuss as to whether the rate of NP at 2.5% was fair and reasonable. As stated earlier, the appellant was also engaged in unaccounted transactions in rough diamonds but not unaccounted manufacturing of diamonds. As per the report of Task Force for diamond sector, the rate of NP in diamond manufacturing was 1.5% to 4.5% and that in diamond trading was 1% to 3%. The appellant has shown NP rate of 1.37% during the year under consideration. The average NP rate for the block period was 1.34%. The above rate of NP was on the business of both manufacturing and trading of diamonds. Therefore, the NP rate on trading of diamond would be lower than the rate of combined business of manufacturing and trading of diamonds. There is also no evidence on record to show that the appellant inflated its expenses in the regular books of account. Considering totality of facts, it would be fair and

reasonable if the NP rate is taken at 2% of the total unaccounted purchases as against rate of 1.37% declared by the assessee. The AO is accordingly directed to apply NP rate of 2% instead of the rate of 2.5% directed by the CIT(A). Accordingly, the ground Nos.1 & 2 raised by revenue and ground No.1 by the appellant are dismissed.

19. Ground No.3 of the revenue is regarding deletion of addition of Rs.3,40,67,103/- towards unexplained initial capital. The facts of the case and decision of CIT(A) have been discussed at para 14.1 and 15.1 respectively. Hence, the same are not repeated here. It is an undisputed fact that there was no evidence for utilization of unaccounted initial capital for carrying out the unaccounted purchases. The addition was made only on the basis of assumption by the AO that the assessee would have incurred unexplained investment in making the unexplained purchases. For this, he has taken the ratio of opening stock to the total purchases in the regular books or AY.2013-14. However, it has been observed by the CIT(A) that the opening sundry creditor of the year as on 01.04.2012 was Rs.11,20,29,413/- whereas the opening stock of diamonds was Rs.4,85,62,805/-. Therefore, no additional capital was required for the opening stock in the regular books of account because the amount of outstanding creditor for goods as on 01.04.2013 was sufficient to take care of the opening stock of diamonds. This fact has not been controverted by the revenue. We also find that the appellant is in this line of business for a considerable period of time and this is not the first year of operation. Hence, it would not be proper to hold that the creditors took care of the appellant in regular business and did not

extend such credit facility for the unrecorded transactions. In absence of any incriminating evidence of unexplained capital for making the initial purchases, there was no justification for making the impugned addition. We find no infirmity in the finding of the CIT(A) on the impugned issue. Accordingly, the ground is dismissed.

ITA No.604/SRT/2024 (AY.2019-20):

20. In ground no.3, the revenue has raised the issue regarding deletion of undisclosed stock of Rs.8,11,34,554/-. This issue is discussed at para 20.1 of the assessment order. Stock difference of Rs.8,11,34,554/- was found during the course of search at premises 5012, Bharat Diamonds Bourse, Bandra Kurla Complex, Mumbai. Shri Chirag V. Savani, partner of the assessee-firm was confronted on the issue and his statement was recorded u/s 132(4) of the Act on 30.06.2018. However, he failed to explain the said stock and stated that he would explain it later. Subsequently, a show cause notice was issued during the assessment proceedings to explain the excess stock. The appellant, in reply, submitted that while working out the book stock on the search date, the staff of the appellant-firm inadvertently omitted to consider stock of polished diamonds received for sale on Jangad basis and only stock of manufactured polished diamonds received from Surat office was considered. The appellant also submitted that the stock lying at Surat of 1040.55 carats was also wrongly included in the closing stock of Mumbai on the date of search. The reconciliation of the stock is given at table in page 34 of the assessment order. The AO did not accept the reply of the assessee because supply of diamonds of

6030 carats on Jangad basis from Empire Bullion, Prop. Pukhraj Padiyar is stated to have been received on 25.06.2018, but during the search on 28.06.2018, no details on such transaction were found nor explained by the partner. There was gap of only three days between the date of receipt and search. Hence, the AO held that the explanation for the reconciliation is only an afterthought. However, he did not make any separate addition towards unaccounted stock by allowing telescopic benefit against accumulated addition on estimated GP of the earlier assessment years covered under the search.

20.1 The appellant, in ground No.3 before CIT(A), contested the above addition made by the AO. The appellant filed submission which is reproduced at para 8.1 at pages 17 to 24 of the appellate order. The CIT(A) has given the findings at para 8.2 and 8.3 of his order. He observed that during assessment proceedings, the appellant filed confirmation and ITR of the parties who had sent stock to the appellant on Jangad basis. The appellant had also furnished stock register and Form 4 of the IDS evidencing disclosure of the impugned stock by the said parties. He observed that the AO has simply rejected the explanation of the assessee by holding it to be an afterthought without further inquiry or verification. Since the details had been given by the assessee to explain the stock difference including the name, PAN, ITR, confirmation, stock details of the parties, the assessee had discharged the initial onus cast on it to prove the excess stock. It was for the AO to make further enquiry and verification regarding the credibility of the said parties. Without such enquiry, which the AO was required to undertake, he was not justified in rejecting the

explanation of the assessee. Hence, the CIT(A) deleted the addition made by the AO.

20.2 Aggrieved by the order of CIT(A), the revenue filed present appeal before us. The Id. CIT-DR for the revenue has supported the order of AO. On the other hand, Id. AR supported the order of CIT(A).

20.3 We have heard both the parties and perused the materials available on record. The AO has discussed about impugned undisclosed stock at para 20.1 of the order, but he has not made any separate addition on the issue of unaccounted stock by allowing telescopic benefit against the accumulated addition of Rs.18,11,34,279/- on account of enhanced GP rate at 6% from AY.2013-14 to 2019-20. Though the ground was raised by the revenue, neither any further argument nor any written submission has been made by the Id. CIT-DR and Id. Sr. DR to controvert the findings of the CIT(A). The CIT(A) has clearly held that the appellant had discharged the initial onus cast on it by furnishing the name of the party, confirmation, PAN, ITR and stock details. Thereafter, the burden shifted to the AO to disprove the assertion of the appellant. However, the AO has not carried out further investigation and verification to controvert the submission of the appellant. Hence, he deleted the addition made by AO. In view of the above fact, we do not find any infirmity in the order of CIT(A). Reliance may be placed on the decisions of Hon'ble Supreme Court in case of CIT vs. Orissa Corporation Pvt. Ltd. (1986) 1986 taxmann.com 1163 and Hon'ble Gujarat High Court in case of CIT vs. Ranchod Jivabhai Nakhava (21 taxmann.com 159). In the result, this ground is dismissed.

21. The ground no.5 of revenue is restricting the addition of Rs.69,41,107/- to Rs.3,25,371/- made by the AO on account of excess cash found during the search. This issue has been discussed by the AO at para 20.2 of the assessment order. Out of cash of Rs.84,58,140/- found from 7 premises of the appellant-firm, Rs.69,33,600/- was seized by the department during the search. The AO issued show cause notice as to why the entire cash found from the premises of the assessee should not be treated as unexplained and added to the total income. The assessee filed reply which was considered by the AO. According to AO, the cash available in the books of account was Rs.8,38,913/-. Therefore, excess cash of Rs.69,41,107/- was treated as unexplained. However, no separate addition was made by allowing telescopic benefit against accumulated addition on estimated GP of the earlier assessment years covered under the search.

21.1 Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appellant submitted that the actual cash balance as per the regular books of account of the appellant-firm, its partners and their wives as on the date of search on 26.08.2018 was Rs.87,40,142/-. The details are given in a table at page 28 of the appellate order. The CIT(A) accepted that the cash belonging to the partners of the firm would be lying in their office premises and the same along with the cash belonging to the firm should be considered as explained. However, contention of assessee that cash belonging to the wives of the partners and other family members should also be considered as part of the cash lying at the office premises was not accepted. Accordingly, cash of the

appellant-firm and its partners amounting to Rs.74,54,649/- was deleted and the remaining amount of Rs.3,25,371/- was sustained.

21.2 Aggrieved by the order of CIT(A), the revenue filed present appeal before us. The Id. CIT-DR for the revenue has supported the order of AO. On the other hand, Id. AR supported the order of CIT(A).

21.3 We have heard both the parties and perused the materials available on record. Though the AO has discussed about impugned undisclosed cash at para 20.1 of the order, but he has not made any separate addition on the subject issue by allowing telescopic benefit against the accumulated profits of Rs.16,24,18,779/- on account of enhanced GP rate at 6% from AY.2013-14 to AY.2019-20. No new argument or written submission with supporting evidence has been filed by the Id. CIT-DR and Id. Sr. DR to controvert the findings of the CIT(A). Hence, we do not find any infirmity in the order of CIT(A) and this ground is dismissed.

IT(SS)A No.19/SRT/2024 (AY.2018-19):

22. In ground no.3, the revenue has raised deletion of Rs.68,000/- towards undisclosed interest income. This has been discussed at para 17 of the assessment order where on analysis of the WhatsApp image retrieved from the mobile of Shri Chirag V. Savani, partner of the appellant-firm, it was found that there are calculation of some late payment interest. It was regarding loan of Rs.40,00,000/- given by the appellant at the rate of 1% interest per month. The loan was for 51 days and the interest amounted to Rs.68,000/-. The source of the loan of Rs.40,00,000/- was not added by allowing telescopic benefit of the

earlier accumulated profits from AY.2013-14 to 2019-20. The CIT(A) has deleted the addition by observing that the addition was made solely on the basis of the WhatsApp image without any corroborative evidence brought on record by AO.

23. Aggrieved by the order of CIT(A), the revenue filed present appeal before us. The Id. CIT-DR for the revenue has supported the order of AO. On the other hand, Id. AR supported the order of CIT(A).

24. We have heard both the parties and perused the materials available on record. Though the ground was raised by the revenue, neither any new argument nor any submission has been made by the Id. CIT-DR and Id. Sr. DR to controvert the findings of the CIT(A). We do not find any infirmity in the order of CIT(A); hence, this ground is dismissed.

IT(SS)A No.35/SRT/2024 (AY.2016-17):

25. The ground No.2 raised by the appellant pertains to sustaining the addition of undisclosed investment in purchase of machinery at Rs.10,50,000/- instead of Rs.7,25,000/- by the CIT(A). It may be mentioned that no separate addition has been made for the same because the said investment was telescoped against the addition of estimated profit. The Id. AR of the assessee has not argued on this issue before the Tribunal. Hence, the ground is dismissed.

IT(SS)A No.36 to 38/SRT/2024 (AYs.2017-18 to 2019-20):

26. The ground no.2 of IT(SS)A No.36/SRT/2024, ground no.3 of IT(SS)A No. 37/SRT/2024 and ground no.4 of IT(SS)A No.38/SRT/2024 of the appellant pertain to dismissal of the grounds by CIT(A) against initiation of penalty u/s

269ST of the Act by the AO as premature. The CIT(A) dismissed the ground because penalty u/s 269ST of the Act has only been initiated but has not yet been levied. We do not find any infirmity in the order of CIT(A) in dismissing the ground as premature. Hence, these grounds are dismissed.

27. The ground no.2 of IT(SS)A No. 37/SRT/2024 and ground no.2 of IT(SS)A No.38/SRT/2024 of the appellant pertain to upholding the action of AO in not excluding the amounts of goods returned of Rs.3,87,81,000/- and Rs.1,57,19,000/- respectively, while estimating the profit on the unaccounted purchase. The CIT(A) has discussed the above issue at para 6 of the appellate order in both years. He has observed that certain transactions in the seized books were categorized by the as 'deal cancel'. However, no documentary evidence were produced to prove the above claim. Hence, AO rejected the claim to reduce the amount from the figure of unaccounted purchases. Since the appellant failed to bring on record any documentary evidence to prove the claim of goods return, the ground was dismissed by CIT(A). Before the Tribunal, the Id. AR argued that the entries are very much part of seized records. Hence, effect should be given while computing the undisclosed income. The argument of the appellant cannot be brushed aside. The same seized material has been used to compute the unrecorded purchases and sales, on which profit rate has been applied to determine the undisclosed income. As a corollary, the purchase returns due to cancellation of deals must be reduced from the gross purchases. Only net purchases represent the goods acquired for sale. The AO is accordingly directed to exclude the goods return after verification of the seized record and

estimate the net profit on undisclosed net purchase as per our finding at para 18.1 of this order. This ground is accordingly allowed for statistical purpose.

28. The other grounds raised by the revenue and appellant are general in nature and do not require adjudication.

29. In the combined result, all appeals filed by revenue are dismissed. The assessee's appeals except in IT(SS)A Nos.37 & 38/SRT/2024 are dismissed. The assessee's appeal in IT(SS)A Nos.37 & 38/SRT/2024 are allowed for statistical purposes.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 31/07/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 31/07/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat