

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.2401/Del/2025
(Assessment Year:2012-13)**

Gyan Enterprises Private Limited, Punjabi Bhawan, 10 Rouse Avenue, New Delhi – 110002	Vs.	ACIT, Circle 10(2) CR Building New Delhi – 110002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACG0512G		
Appellant	..	Respondent

Appellant by :	Sh. Chandan Agarwal, CA Sh. Ajay Marwah, Adv.
Respondent by :	Sh. Ajay Kumar Arora, Sr. DR

Date of Hearing	03.12.2025
Date of Pronouncement	09.01.2026

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 14.02.2025 of the Ld. National Faceless Appeal Centre (NFAC) (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in DIN & Order No:

ITBA/NFAC/S/250/2024-25/1073299823(1) arising out of the assessment order dated 08.12.2019 u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the AO, for AY: 2012-13.

2. Heard and perused the records. The assessee is a non-banking financial company. In this case, return declaring business income of Rs.8,04,59,896/- was filed on 29.09.2012. The assessment order u/s 143(3) was finalised on 26.02.2015 on an assessed income of Rs. 9,27,97,110/-. Subsequently, information was received from Asst. Director of Income Ta. (Inv.), Unit-4(2), Mumbai vide letter dated 04.08.2017 that M/S Gyan Enterprises P Ltd. had paid an amount of Rs. ...in cash against the purchase of Diamond jewellery i.e. 16 carat yellow ctr. stone diamond ring during FY .2011-12. On examining the information with assessment records and inquiry made in this regard, it was found that there was escapement of income within the meaning of section 147/148 of the Act. Hence, the case was reopened u/s 147/148 of the Income Tax Act and notice u/s 148 of the Act was issued on 10.01.2019, after recording reasons in writing and with previous approval/satisfaction of the Principal Commissioner of Income Tax Delhi-4, New Delhi.

2.1 In response to the notice u/s 148 of the Act, the assessee filed its return of income at an amount of Rs. 8,04,59,896/- on 17.06.2019 for AY 2012-13.

Subsequently notice u/s 143(2) issued on 21.09.2019. On request of the assessee, reason recorded for reopening of the case were provided to the assessee along with the incriminating statements of various persons and other documents. The A.O requisitioned various details from the assessee but there was allegedly no compliance.

2.2 The A.O noted that a search and survey operation was carried out by the Directorate of Investigation (Mumbai) at the premises of the Nirav Modi Group. During the search and survey proceedings, various evidences were gathered which revealed that Nirav Modi group indulged in the practice of accepting "On Money" (cash) from customer against the sale of Diamond/Gold Jewellery. The employees of the assessee group who were maintaining the cash data in digital form admitted in their statements recorded on oath that the "On Money" (Cash) was received over and above the sale consideration recorded by the assessee group in its books of account. The A.O relied on several statements of various key persons in support of the above, in which the specific details and *modus operandi* were admitted, and has reproduced the relevant extracts in the assessment order.

2.3 During the course of survey proceedings, an excel file containing details of jewellery sold from April 2016 to 31-03-2017 was found from the laptop of Mr. Saurabh Shah which contained the details of jewellery sold both at the Mumbai

and Delhi store and also included the mode of payment. The A.O has reproduced the relevant extracts of the statement in his order. As from the details in the excel sheet AO observed that a 16 ct Yellow Ctr Stone Diamond Ring had been purchased by the assessee Gyan Enterprises for which an amount of Rs. 70,00,000 had been paid in cash. The A.O noted that analysis of table above made it clear that total costing of the products sold by Nirav Modi to M/S Gyan enterprises Pvt. Ltd itself came to INR 1,18,01,474 and the selling price fixed by Mr. Nirav Modi was Rs. 17000000. On the other hand M/S Asha Burman/M/s Gyan Enterprises Pvt. Ltd. had claimed to paid only an Amount of Rs. 10000000 through Cheque which was less than the cost, which the A.O noted was practically not possible that products were sold to them at a price less than costing. This fact further substantiated the cash payment made by her for the purchase of above mentioned jewellery. In addition the A.O relied on multiple statements to arrive at a conclusion that the assessee had paid an amount of Rs 70,00,000 for the purchase of the jewellery. A careful comparison of the information as contained in seized document (in form of digital data) during search and the information as available in the return of income of the assessee, made it clear that the Assessee had purchased jewellery from Nirav Modi/Firestar Group during AY 2012-13, however. the Assessee had disclosed only partial investments in the jewellery by disclosing payment through cheque and by hiding payments made in cash. The A.O

concluded that the assessee had purchased the jewellery for Rs 1,70,00,000/- but paid only Rs 1,00,00,000 by cheque and Rs 70,00,000/- in cash. Accordingly, the A.O made an addition of Rs 70,00,000 /s 69B of the Act. Same was sustained by the Id. CIT(A) for which assessee is in appeal raising **following grounds;**

- “1. That the re-opening of the assessment for AY 2012-13 u/s 147 for re-assessment of all facts disclosed in the assessment u/s 143(3) is bad in law and deserves to be quashed. The reopening of completed assessment is bad in law and requires to be set aside.

 2. On the facts and circumstances of the case and in law, the learned A.O has erred in making additions u/s 69B on account of jewellery purchase alleging that Rs.70 lakhs has been paid in cash.

 3. No documentary evidence of Rs.70 lakhs payment to Nirav Modi is given to the Appellant, except relying on statement of some persons. No opportunity of cross - examination is given to the Appellant to verify the genuineness of those persons who alleged of on money payment of Rs.70 lakhs for jewellery purchase.

 4. The additions made by the AO of Rs.70 lakhs on money payment u/s 69B suffers from serious infractions of law and is purely based on conjectures and surmises and hence deserves to be quashed.

 5. The appellant craves leave to alter, amend or withdraw all or any of the Grounds of Appeal herein or add any further grounds as may be considered necessary and to submit such statements, documents and papers as may be considered necessary either before or during the hearing.”
3. Ld. AR contended that after four years and before six years the case was reopened on borrowed satisfaction and old record was sought which was not

available and no opportunity to cross examine the witnesses was granted. On suspicion the allegation is not corroborated.

4. Ld. DR however defended the impugned orders submitting that statements of assessee's employees and of Nirav Modi/Firestar Group were relied where the payment of 'on money' was specifically admitted and the statements are consistent.

5. We have given thoughtful consideration to the material on record and it comes upfront that assessee allegedly bought the ring costing Rs. 1181474.41 and paid Rs. 1,00,00,000 by cheque. The fact of cost to seller was quite verifiable by getting some valuation report. However, no such effort was made by the AO to get valuation of ring got done so as to establish that certainly ring was worth more than Rs. 1,00,00,000 paid by cheque and remaining component must have been by cash as no prudent person would sell an item of jewelry for loss. However, as the initial burden was on assessee, it was assessee who should have rebutted the evidence relied by AO, by showing that valuation of jewelry was Rs. 1,00,00,000 as paid by cheque and there would have been no occasion to pay anything more by way of cash.

6. Then what we find is that investment of undisclosed income was found in the form of 'on money' allegedly paid by the assessee but for which the record was

found in and with the Nirav Modi/Firestar Group. There was no admission or any material corroborating the same found with assessee. Thus it is not a case of admitted evidence found with assessee or admitted facts occurring in books of assessee. Admission is relevant and admissible as evidence against the maker only. Then admission to be admissible must be clear, unequivocal and not ambiguous. What the department relies is admission of employees of Nirav Modi/Firestar Group and the record kept by them. In the statement of any of the employees there is no specific questioning on the alleged 'on money' paid by the assessee. The statement only disclose the fact of practice of receiving 'on money' but if at all in case of assessee to such money was received needed to be at least deposed on oath by witnesses. In these circumstances when only evidence is statements and documents of other persons then right to cross examine witness gains importance. Specially when it is a case of relying electronic evidences. However, Id. CIT(A) has not appreciated this aspect in correct perspective while dealing with the ground of assessee in **para 8.21** and same is reproduced below;

“8.21 From the above detailed analysis given by the Hon'ble Court on the right of cross examination and applying it to the facts of this case it is seen that a search and seizure action was carried out on the Nirav Modi Group wherein it was found that jewellery was being sold to persons and payments were being accepted by way of cheque, electronic modes, cash or combinations thereof. Statements of key persons were recorded to confirm the modus operendi adopted. Excel sheets were

found which gave the precise details about the cash payments made by clients for the purchases. It was in this connection that it was found that the appellant Gyan Enterprises had purchased a 16 carat yellow diamond ring and paid Rs 70,00,000 in cash. The Nirav Modi group indulged in cash receipts for multiple customers and clients of which the assessee was only one. There is no indication that the investigations were aimed solely and only targeted the appellant but instead it is clear that they were generic in nature. The investigations were targeted at the Nirav Modi group to unearth the malpractice of unaccounted cash receipts and as a consequence unearthed the details of parties who used unaccounted income for the jewellery purchases. In this case all the statements relied upon were provided by the A.O to the assessee. Therefore, considering the factual scenario no prejudice has been established to the assessee by not making the said persons available for cross examination .The Hon'ble Supreme Court has held In Bakshi Ghulam Mohammad 89 that the right of hearing cannot include the right of cross examination and the right must depend upon the circumstances of each case and must also depend on the statute under which the allegations are being enquired into. Furthermore, the Hon'ble Kolkata High Court in Swati Bajaj (supra) has held that “right to cross-examine the witness who made adverse report is not an invariable attribute of the requirement of the dictum, "audi alteram partem". The principles of natural justice do not require formal cross-examination. Formal cross examination is a part of procedural justice. It is governed by the rules of evidence, and is the creation of Court, It is a part of legal and statutory justice therefore it cannot be laid down as a general proposition of law that the revenue cannot rely on any evidence which has not been subjected to cross examination.” Accordingly, I am of the opinion that by not allowing the facility of cross examination would not render the assessment order bad in law. The contentions of the appellant on these counts are rejected.

7. Thus, we find it an appropriate case to set aside the assessment and restore the issues to the files of AO to give assessee opportunity to cross examine the witnesses and also establish the valuation of ring to rebut the evidences of 'on money' payment, relied by AO.

8. **Appeal is allowed for statistical purposes** with aforesaid consequences to follow in afresh assessment by AO.

Order pronounced in the open court on 09.01.2026

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 09.01.2026
Rohit, Sr.PS

Sd/

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi