

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHANDIGARH**HYBRID HEARING****BEFORE HON'BLE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

1. आयकर अपील सं. / ITA No.1010/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2020-21)
- &
2. आयकर अपील सं. / ITA No.1011/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2021-22)
- &
3. आयकर अपील सं. / ITA No.1012/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2022-23)
- &
4. आयकर अपील सं. / ITA No.1013/CHANDI/2025
(निर्धारण वर्ष / Assessment Year: 2023-24)

Shri Kapil Gupta C/o M/s Himgiri Beverages Kala Amb – 173030 (HP)	बनाम/ Vs.	ACIT (Central) Shimla (HP) -171001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADDPG-0399-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Ajay Jain (CA) a/w Sh. Lovesh Bansal (CA) – Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Smt. Kusum Bansal (CIT) & Shri Rajat Kumar Kureel (CIT) – Ld. DRs

Date of Final Hearing	:	27-01-2026
Date of Pronouncement	:	29-01-2026

आदेश / O R D E R**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2020-21 to 2023-24 arises out of separate orders of learned first

appellate authority. However, the facts as well as issues are substantially the same in all the years. First, we take up appeal for AY 2021-22 as the lead year which arises out of an order of learned Commissioner of Income Tax (Appeals)-3, Gurgaon dated 31-07-2025 in the matter of an assessment framed by Ld. AO u/s 143(3) r.w.s. 147 of the Act on 12-03-2025. The assessee has revised its ground no. 6(b). The final grounds of appeal read as under: -

1. The issuance of the Section 148 notice by the Jurisdictional AO is contrary to the mandate laid down in the notification No.18/2022/F.No.370142/16/2022-TPL (Part 1) dated 29-3-2022.

2. That the assessment order is null and void as no mandatory approval under section 148B has been taken before completion of assessment u/s 143(3) r.w.s. 147 of the Income Tax Act.

3. That the centralization of cases is bad as there was no pending scrutiny on the date of issuance of notices therefore, the transfer of jurisdiction u/s 127 of the Income Tax Act, 1961 is bad in the eyes of law, therefore the assessment order needs to be quashed.

4. The PCIT has given sanction for issuance of notice u/s 143(2) in mechanical manner and from the approval it is clear that it has been given without recording any satisfaction and only on the basis of search warrants only.

5. The AO has taken approval in a mechanical manner as the quantum escaped mentioned in the approval is "0" and on the basis of copy of warrants only.

6.(a) The AO erred in making addition of Rs.2,91,94,936/- u/s 28 simply on the basis of rough noting and loose & dumb documents namely Annexures A1, A2, A3 which has no relevance with sale / purchase and payment and statements were given under threat and coercion and the assessee was forced to admit certain things.

6.(b) Without prejudice to ground no.6(a) of appeal, the AO has erred in applying GP rate of 5.38% instead of a net profit rate of 1.32% declared in ITR for relevant assessment year 2020-21 and thus erroneously made an addition of Rs.2,91,94,936/- u/s 28.

7.(a) The Ld. AO erred in making addition of Rs 48,54,000/- u/s 69A r.w.s. 115BBE on account of unexplained investment for purchase of gold bar without considering our replies dated 05.02.2025 and 04.03.2025 in true letter and spirit.

(b) The AO erred in making further addition after GP addition (ground 6b) which has not been approved by Hon'ble courts in various decisions.

8. (a) The AO erred in making addition of Rs 2,20,00,000/- u/s 69A in Para 12.4 without considering our reply dated 05.02.2025 & 04.03.2025 in true letter and spirit wherein it was denied to have made any amount to Sunil Bansal and the AO has multiplied figures by 1000 without any inquiry and AO did not call Sunil Bansal to verify the truth.

(b) The AO erred in making further addition after GP addition (ground 6b) which has not been approved by Hon'ble courts in various decisions.

9. (a) The AO erred in making addition of Rs 82,00,000/- u/s 69A in Para 13.3.2 without considering our reply dated 05.02.2025 & 04.03.2025 in true letter and spirit

wherein it was denied to have made any amount to M/s Jia Diamond and the AO has multiplied figures by 1000 without any inquiry and AO did not call Jia Diamonds to verify the truth.

(b) The AO erred in making further addition after GP addition (ground 6b) which has not been approved by Hon'ble courts in various decisions.

10 (a) The AO erred in making addition of Rs.1,26,95,500/- u/s 69 in Para 14.3 without considering our reply dated 05.02.2025 & 04.03.2025 in true letter and spirit wherein it was denied to have made any investment in cash for the investment in land and the AO has multiplied figures by 1000 without any inquiry to verify the truth.

(b) The AO erred in making further addition after GP addition (ground 6b) which has not been approved by Hon'ble courts in various decisions.

11. Without prejudice to the above grounds the department has taken the receipt mentioned in the annexure A-1, A-2 & A-3 as business receipt & also make addition by applying GP rate & at the same time the department has taxed the payment under the head undisclosed assets/expenditure/investments out of business receipts taxed by the department & therefore no separate addition can be made on account of unexplained investment/expenditure can be made out of business receipts taxed by the AO.

12. That AO has not digitally signed the assessment order passed under section 143(3) and demand notice U/s 156 of Income Tax act & therefore the assessment order is bad in law and deserves to be quashed.

13. That the Addl. CIT has given approval in mechanical manner & therefore assessment is bad in law and deserves to be quashed. Further CIT(A) has wrongly upheld the action of assessing officer without any cogent reason.

14. The AO erred in not following Circular no. 19/2019 of the CBDT that directs that communication by the Income Tax Authorities after 01.10.2019 shall mandatorily are to be sent through the computer-generated DIN No.

15. That AO has not digitally signed the assessment order passed under section 143(3) and demand notice U/s 156 of Income Tax act & therefore the assessment order is bad in law and deserves to be quashed.

16. Ld. AO erred in initiating penalty proceedings under section 270A, 271AAC, 271A, 271B, 271AAD

As is evident, the assessee has assailed the legality of assessment proceedings and also assailed various quantum additions on merits.

2. The Ld. AR made vehement arguments qua grounds of appeal and filed written submissions along with supporting case laws and computations. The Ld. CIT-DRs also advanced arguments and supported the orders of lower authorities. The case was put for clarification which was responded to by both the sides. Having heard rival submissions and upon perusal of case records / case laws, our adjudication would be as under.

3. The assessee being resident individual belongs to *M/s Himgiri Beverages* group of cases. The assessee-group was subjected to search action by the department u/s 132 on 04-11-2022 based on which impugned assessment has been framed against the assessee. The case of the assessee was centralized vide order u/s 127 dated 28-07-2023. Subsequent to search action, a notice u/s 148 was issued with due approval of appropriate authority on 29-12-2023 and the assessee declared income of Rs.20.58 Lacs. Notices u/s 143(2) and 142(1) were issued from time to time during the course of assessment proceedings which were duly been responded to by the assessee. The assessee is stated to be engaged in manufacturing and sale of alcoholic liquor under its proprietorship concern namely *M/s Himgiri Beverages*. The business is operated mainly from *village Meerpur Kotla, Kala Amb, District Sirmour of Himachal Pradesh*.

Assessment Proceedings

4.1 During search, it transpired that no regular books of accounts were being maintained by the assessee either at his residential premises or at his business premises. This fact stood corroborated by the statement of various employees as taken during the course of search and also in view of the fact that the books were not got audited by the assessee. The whole assessment of Ld. AO is based on Annexures A-1, A-2 and A-3 as found and seized from residential premises of the assessee. The Annexures were in the shape of three diaries for calendar years 2020, 2021 and 2022. These diaries contained accounted and unaccounted transactions as done by the assessee with respect to sale and purchase of *M/s Himgiri*

Beverages. The statement of the assessee was recorded u/s 132(4). The statements of assessee's customers / suppliers were also recorded which corroborated the entries in these diaries. In this background, following conclusions were drawn by Ld. AO at para 8.2 of the assessment order: -

- a) M/s Himgiri Beverages is engaged in unaccounted and undisclosed production of country liquor. This is done by using the surplus ENA generated on account of difference in actual wastage and wastage allowed by excise authorities. However, substantial part of such unaccounted production is carried out using raw materials purchases using unaccounted cash from various suppliers, the record of payments to whom has been maintained by Sh. Kapil Gupta in his diaries seized as Annexure A-1, A2 & A3.
- b) The unaccounted liquor so manufactured is transported by resorting to manual issue of certificates by the State Excise and Taxation officer posted at the factory premises and by manually altering the number of the vehicle in the L-34 generated online.
- c) The records created to transfer such unaccounted liquor are destroyed after delivery to the buyers.
- d) Perusal of the above statements of employees of M/s Himgiri Beverages corroborated the fact that the three Diaries belonging to calendar year 2020 (Annexure A-1), calendar year 2021 (Annexure A-2) & calendar year 2022 (Annexure A-3) which were found and seized from the residential premise of Mr. Kapil Gupta i.e., H.No.601, Sector-7, Panchkula are indeed those diaries in questions about which Mr. Ajay and Mr. Dhananjay have referred to in their statements. Further, the contents of these diaries were verified and found to be correct in respect of accounted and unaccounted transactions of Mr. Kapil Gupta when corroborated with evidences seized from the premises of various other parties which were covered during the course of search action. The entries of accounted for transactions (excise-paid sales & transactions through banking channels) recorded in the seized diaries were also found to be correct upon corroboration with the ledger accounts, excise records and bank statements.

Based on these conclusions, Ld. AO proceeded to make various additions in the hands of the assessee.

4.2 The assessee filed retraction of the statements after 16 to 17 months which was rejected by Ld. AO considering various judicial decisions as enumerated in the assessment order. The retraction was held by Ld. AO to be mere after-thought to derail the assessment proceedings. The Ld. AO also quoted the provisions of Sec.292C and Sec. 132(4A) *qua* presumption of books of accounts etc. and rejected the retraction so made by the assessee.

4.3 The Ld. AO concluded that the sales recorded with figures ending with “two” viz. 802, 702 and 202 etc. were unaccounted sales. Further, cash receipts recorded in the said diaries (with a suppression of three zeros) have also not been recorded in the books of accounts. Based on these entries, the unaccounted sale of country liquor and unaccounted cash receipts were worked out during search proceedings. The accounted sales mentioned as “800” tallied with the excise records. The assessee had no other source of income. It was thus beyond doubt that all cash receipts as mentioned in the diaries were proceeds of unaccounted sales of liquor. The data of cash received, cash paid and number of unaccounted *petties* (boxes) was tabulated by Ld. AO as under: -

No.	Particulars	Calendar Year 2020	Calendar Year 2021	Calendar Year 2022	Total (Rs.)
1.	Total Amount of cash received	51,07,34,800/-	41,61,47,000/-	28,77,62,000/-	121,46,43,800/-
2.	Total Amount of Cash Paid	39,03,83,700/-	20,29,19,000/-	23,10,14,000/-	82,43,16,700/-
3.	No. of unaccounted petties	5,10,400	4,11,900	2,03,500	11,25,800

The financial year wise data was as under: -

No.	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	Total (Rs.)
1.	Total Amount of cash received	9,40,14,000/-	54,26,56,800/-	40,26,31,000/-	17,53,42,000/-	121,46,43,800/-
2.	Total Amount of Cash Paid	6,82,58,200/-	37,45,51,500/-	31,31,59,000/-	6,83,48,000/-	82,43,16,700/-

On total amount of cash received for Rs.54.26 Crores for this year, Ld. AO applied average Gross Profit (GP) rate of 5.38% as reflected by the assessee for FYs 2018-19 to 2020-21 and computed additional profit of Rs.291.94 Lacs which was added as assessee's business income u/s 28.

4.4 During search, cash of Rs.115.90 Lacs was found. The jewellery and gold bars were also found which was valued at Rs.357.87 Lacs. The gross and net weight of the jewellery and gold bar was 6901.08 grams and 4021.60 grams respectively. The assessee, in recorded statement, stated that the jewellery belonged to himself and his family. It was further stated that one gold bar weighing 1 Kg was purchased during FY 2020-21 whereas two bars were purchased in FY 2022-23 which was evident from purity certificates. The fourth gold bar was purchased in FY 2019-20 for which no purity certificate was available. It was stated that the Jewellery and gold bars were acquired by assessee's wife on various family occasions. Some jewellery as well as gold bars were stated to be purchased by the assessee himself.

4.5 During the course of assessment proceedings, it was stated by the assessee that cash found was out of business sale in ordinary course of business. A part of the jewellery was stated to be acquired from parents of the assessee and his wife and balance was acquired out of business receipts. It was further stated that the valuation was much higher than the cost of acquisition and there was no unaccounted jewellery. However, rejecting the same, Ld. AO made addition of one gold bar of 1 Kg which was valued at Rs.48.54 Lacs.

It was also held by Ld. AO that the assessee failed to prove that the cash was paid out of cash generated from its business activities.

4.6 The Ld. AO made another addition on account of alleged cash transaction with Mr. Sunil Bansal. In the seized diaries, a party named "*whisky / whisky Mohali*" was identified with respect to whom various transactions were recorded. In recorded statement u/s 132(4), the assessee identified the same as Shri Sunil Bansal, his builder friend. However, the name of this party was saved as "BAWA" in the mobile phone of the assessee. It was seen that the assessee was regularly recording cash receipts as well as cash payments by suppressing three digits. The details of transactions between the assessee and Shri Sunil Bansal as noted in the seized diaries were tabulated by Ld. AO. The cash amount as given by the assessee to Shri Sunil Bansal aggregated to Rs.16.45 Crores and cash amount as received by the assessee aggregated to Rs.2 Crores. Post search proceedings, summons u/s 131(1A) were issued to Shri Sunil Bansal who submitted ledger of unsecured loans of the assessee. All the transactions were stated to be carried out by him through banking channels only. The Ld. AO observed that though these were loan transactions, there was no loan agreement or any other evidence. It could be deduced that ledger filed by Shri Sunil Bansal was merely an after-thought to color the transactions reflecting in the bank account in the guise of unsecured loans as no evidence for the corroboration for the said loan was filed by Shri Sunil Bansal in the form of any loan agreement. Considering the *whatsapp chats* and entries in the diaries, it was to be concluded that the payments made by the assessee were in lieu of unaccounted

investments. The assessee denied any cash transactions and stated that all the transactions were carried out through banking channels only. However, rejecting the same, Ld. AO alleged that cash payment of Rs.220 Lacs pertaining to this year remained unexplained and the same was, accordingly, added u/s 69A.

4.7 The perusal of diaries reflected huge payment by the assessee to one party recorded as 'jia' which was identified by the assessee as Mr. Hukum Goyal who was operating a jewellery store by the name M/s Jia Diamonds, Chandigarh. As per notings, the assessee advanced Rs.265 Lacs over four financial years. Upon perusal of *whatsapp chats*, it was seen that M/s Jia Diamonds was regularly sending pictures of jewellery to the assessee. The Ld. AO proposed addition of Rs.82 Lacs as pertaining to this year and show-caused the assessee. The assessee denied having any business relation with M/s Jia Diamonds and stated that only gold and diamond jewellery was purchased through business income only. The Ld. AO rejected the contention that payment was made towards gold jewellery and gold bars and accordingly, the amount of Rs.82 Lacs was added as unexplained income of the assessee u/s 69A r.w.s. 115BBE.

4.8 The last addition was on account of alleged investment in certain land at *Chakki Mod, Kasauli*. The statement of another assessee Shri Anup Kumar Aggarwal was recorded u/s 132(4) wherein he admitted that cash payment of Rs.148.02 Lacs was paid in the deal. The property in question was in joint name of the assessee and his sister Smt. Pooja Aggarwal. Though the assessee was having 50% share, he paid more than his share of Rs.89.95

Lacs on behalf of her sister Smt. Pooja Aggarwal. The statement of Shri Anup Kumar Aggarwal was confronted to the assessee wherein he admitted to have paid Rs.1.27 Crores in cash for which no documentary evidences could be furnished by the assessee. The Ld. AO noted that the total purchase consideration of the property was Rs.179.91 Lacs. The property was purchased jointly by the assessee with Smt. Pooja Aggarwal in FY 2020-21. The share of each co-owner was Rs.89.95 Lacs out of which Rs.21 Lacs each was paid via cheque and the remaining amount of Rs.68.95 Lacs was paid in cash. Out of Rs.68.95 Lacs pertaining to Smt. Pooja Aggarwal, Rs.58 Lacs was borrowed by her from the assessee. Thus, total cash paid by the assessee was Rs.126.95 Lacs. Post-search proceedings, identity of the seller was confirmed as Shri Ravinder Singh Thakur and summons were issued to him u/s 131(1A). His statement was recorded wherein he accepted that the property was sold but he denied any cash transaction in this regard. However, disregarding the same, the amount of Rs.126.95 Lacs was added by Ld. AO to the income of the assessee as unexplained investments.

4.9 Finally, the returned income of Rs.20.58 Lacs was assessed at Rs.790.03 Lacs in the following manner: -

No.	Particulars	Amount (Rs. in Lacs)
1.	Returned income	Rs.20.58 Lacs
2.	Addition of GP on unaccounted sales	Rs.291.95 Lacs
3.	Addition of Gold Bar	Rs.48.54 Lacs
4.	Addition of cash transaction u/s 69A	Rs.220.00 Lacs
5.	Addition of cash transaction with Jia Diamonds	Rs.82.00 Lacs
6.	Addition of unaccounted investment in Land	Rs.126.96 Lacs
	Assessed Income	Rs.790.03 Lacs

4.10 In AY 2020-21, the assessment was framed u/s 143(3) r.w.s. 147 of the Act on 12-03-2025 on similar lines wherein Ld. AO made identical addition of business income u/s 28 for Rs.50.57 Lacs by applying Gross Profit (GP) rate on total cash receipts. The addition was also made for purchase of one gold bar for Rs.43.25 Lacs. Another addition of Rs.75 Lacs was made being payment made to M/s Jia Diamonds. Finally, the returned income of Rs.13.58 Lacs was assessed at Rs.182.41 Lacs.

4.11 In AY 2022-23, the assessment was framed u/s 143(3) of the Act on 27-09-2024 wherein Ld. AO made similar addition of business income u/s 28 for Rs.216.61 Lacs by applying Gross Profit (GP) rate on total cash receipts. Another addition of Rs.38 Lacs was made being payment made to M/s Jia Diamonds. The addition on account of cash transactions with Shri Sunil Bansal was quantified at Rs.13.75 Crores.

The last of the addition in this AY was for Rs.10.50 Lacs against purchase of *Mercedes* Car. The same stem from whatsapp chat from the mobile phone of the assessee wherein cash amount of "10.0" was written along with total value of "22.0". The assessee stated that chat pertained to *Mercedes* Car purchased by him in the year 2021. The Ld. AO concluded that out of total value of Rs.22 Lacs, Rs.10 Lacs was paid in cash. During assessment proceedings, the assessee stated that the car was purchased way back in financial year 2019-20 through banking channels for Rs.15 Lacs out of current account of *M/s Himgiri Beverages*. In support, the copy of bank statement highlighting payment of Rs.15 Lacs on 24-10-2019 was also furnished. It was contended that mere reliance on *whatsapp*

chat could not be placed to make this addition. However, rejecting the same, the alleged cash component of Rs.10.50 Lacs as mentioned in the chat was added as taxable income of the assessee u/s 69A. Finally, the returned income of Rs.20.76 Lacs was assessed at Rs.1660.87 Lacs.

4.12 In AY 2023-24, the assessment was framed u/s 143(3) of the Act on 12-03-2025 wherein Ld. AO made identical addition of business income u/s 28 for Rs.94.33 Lacs by applying Gross Profit (GP) rate on total cash receipts. The addition was also made for gold jewellery and bar for Rs.203.69 Lacs. Another addition of Rs.100 Lacs was made being payment made to M/s Jia Diamonds. The addition on account of cash transactions with Shri Sunil Bansal was quantified at Rs.50 Lacs. The cash was found for Rs.113 Lacs which was also added to the income of the assessee after granting benefit of personal savings for Rs.2.90 Lacs. The last of the addition was for Rs.200 Lacs as allegedly received from Shri Sunil Bansal during this year. Finally, the returned income of Rs.31.10 Lacs was assessed at Rs.792.13 Lacs. Aggrieved, the assessee preferred further appeals in all the years.

Appellate Proceedings

5. The assessee assailed impugned addition on legal grounds as well as on merits by way of elaborate written submissions which have already been extracted in the impugned order. After due consideration therefore, Ld. CIT(A) rejected legal grounds qua centralization of cases and quoting of DIN on assessment order. The argument that the seized document was dumb document was also dismissed. The approval of Ld. Addl. CIT, Chandigarh was held to be

in accordance with law. The said approval was stated to be administrative in nature and for the same, Ld. CIT(A) referred to the decision of Hon'ble Karnataka High Court in the case of **Rishabh Chand Bhansali (267 ITR 577)**. The action of Ld. AO in making impugned additions was also confirmed on merits. Finally, the appeal was dismissed against which the assessee is in further appeal before us. Similar orders were passed for AYs 2020-21, 2022-23 & 2023-24 and the assessee's respective appeals were rejected by Ld. CIT(A). Aggrieved, the assessee is in further appeal before us in all the years.

Our findings and Adjudication

6. From the facts, it emerges that the assessee is exclusively engaged in business activities. Admittedly, the assessee does not have any other source of income except manufacturing and sale of alcoholic liquor under its proprietorship concern namely M/s Himgiri Beverages. The business is operated mainly from *village Meerpur Kotla, Kala Amb, District Sirmour of Himachal Pradesh*. The assessee group was subjected to search action by the department u/s 132 on 04-11-2022 wherein three diaries were seized which were marked as Annexures A-1, A-2 and A-3. The whole assessment is based on notings as found mentioned in these diaries. Another fact is that the assessee has not maintained any regular books of accounts and no such books have been found maintained either at the residential premises or at the business premises of the assessee. The seized material is in the shape of three diaries for calendar years 2020, 2021 and 2022. These diaries contained accounted and unaccounted transaction as done by the assessee

with respect to sale and purchase of M/s Himgiri Beverages. The statement of the assessee was recorded u/s 132(4). The statements of assessee's customers / various suppliers were also recorded which corroborated the entries in these diaries. The Ld. AR initially argued that these diaries were merely dumb documents and therefore, no cognizance of the same could be taken by Ld. AO while making the impugned additions in the hands of the assessee. However, in view of the detailed findings of Ld. AO corroborating the noted transactions with the statement made by the assessee u/s 132(4) during search proceedings as well as with the bank statements and other documents / evidences, we find this argument to devoid of any merits. The presumption of Sec.292C and 132(4A), in our considered opinion, has correctly been invoked by Ld. AO. Therefore, this argument as raised by Ld. AR is to be rejected at its very outset. In our considered opinion, these diaries could not be considered as mere dumb documents since the same contain the actual transactions as carried out by the assessee during calendar years 2020 to 2022.

7. During the course of hearing, Ld. AR did not press for the issue of non-quoting of DIN on the assessment order in view of the fact that this matter is already *sub-judice* before Hon'ble Supreme Court and the same has not attained finality. Similarly, the issue of notices u/s 148 for AYs 2020-21 and 2021-22 as issued by Jurisdictional Assessing Officer (JAO) instead of Faceless Assessing Officer (FAO) is similarly stated to be *sub-judice* before Hon'ble Supreme Court. In view of the same, both these legal issues are kept open and to be adjudicated, if so required, in the light of outcome of

decisions of Hon'ble Supreme Court qua these issues. Further, no argument has been made by Ld. AR on the centralization of cases u/s 127. The issue of approval as taken by Ld. AO from Addl. CIT, in our considered opinion, has adequately been dealt with by Ld. CIT(A) in the impugned order and we concur with the same. No argument has been made on other legal grounds. All these grounds stand disposed-off, for all the years, accordingly.

8. On merits of addition, Ld. AR has pleaded for computation of income on commercial principles in accordance with the transactions as found noted in the three diaries. For this, detailed written submissions and computations have been filed by Ld. AR which we have gone through. It has been submitted by Ld. AR that Ld. AO has taxed entire receipts / sales as recorded in these diaries on the assumption that the assessee has maintained complete record of income & payment in his personal diaries as maintained by him and at the same time, Ld. AO has heavily relied upon the fact that that the assessee has not maintained any books of accounts. Further, no regular books have been found during the course of search. It has been presumed by Ld. AO that these are organized records for sales which are accounted for in the excise records and also for sales which are not accounted for in excise records. The Ld. AO has taxed entire business receipts as recorded on left hand of these diaries and also taxed the payments made out of said receipts which are recorded on right hand side. Not only that, the jewellery as acquired out of these payments have again been added for the third time which is wholly unjustified. The same is against well accepted judicial principle that once the receipt has been taxed then payment /

investment made out of such receipts could not be added again since there is clear nexus between the receipts and payments as both are found recorded in the same material. Once entire receipts are considered as business receipts and profit has been estimated on the same, there is no further scope of taxing the payments made out of said business receipts and which have been found recorded in the same material. This is against the principle that same income could not be taxed twice. It has further been contended that even receipts have been counted twice and all the receipt transactions do not constitute sales of the assessee. To support the same, Ld. AR demonstrated that the receipts include receipt from one *Shri Mohinder Singh (Kaku)* who acted as sales manager for the assessee. He collected cash during his tour and informed telephonically the parties' names and the assessee entered the same in his diaries. After the completion of tour, sales manager deposited cash as available with him i.e., cash collection after deducting freight and tour expenses. At that time also, the assessee enters the amount so received from him and also enter the expenses in order to reconcile the balance with him. Therefore, this collection would be entered twice i.e., firstly, at the time of collection during tour in the name of parties and secondly, when sales manager delivers physical cash. Therefore, his receipts could not be considered as sales again. In the said background, Ld. AR pleaded for fair estimation of income of the assessee.

9. After due consideration of these submissions, we find substantial merits in the same. It is a fact that these diaries do not contain complete record of income & payment as assumed by Ld.

AO. The Ld. AO himself has recorded a finding that the assessee was not maintaining any regular books of accounts and no books were found either at residential premises or at the business premises of the assessee. In fact, the assessee's entire sales are embedded under codes "800" and "802". The sales mentioned under "800" have duly been accounted for by the assessee in his return of income which has also been accepted by Ld. AO. The major dispute is with regard to sales mentioned under code "802" which are unaccounted sales transactions by the assessee. These sales have not been considered in assessee's return of income. It is admitted fact that the assessee does not have any other source of income and therefore, the receipts and payments, as noted in the seized diaries, would exclusively pertain to assessee's business activity of manufacturing and sale of liquor only. It is also trite law that same income could not be taxed twice since the same is against basic principle of taxation. Once accounted as well as unaccounted sales are considered for addition, the payments / investments made out of the same could not be added in the hands of the assessee again. The jewellery acquired out of said payments could also not be added since the same would amount to same income being taxed thrice. In our considered opinion, once the profit is estimated on unaccounted sales, the same would take care of leakage of revenue in the hands of the assessee. It is quite evident that Ld. AO has taxed entire business receipts as recorded on left hand of these diaries and also taxed the payment / investments made out of said receipts which are recorded on right hand side. Further, all the receipt transactions have been presumed to be the sales receipts of the assessee which is not the case as

sufficiently demonstrated by Ld. AR. The action of Ld. AO violate well accepted judicial principle that once the receipt has been taxed then payment / investment made out of such receipts could not be added again since there is clear nexus between the receipts and payments as both are found recorded in the same material. Once entire receipts are considered as business receipts and profit has been estimated on the same, there is no further scope of taxing the payment made out of said business receipts and which have been found recorded in the same material. In principle, we concur with these submissions of the assessee and find substantial merit in the same.

10. Proceeding further, as tabulated by Ld. AR, the quantum of unaccounted sales as mentioned under the head “802” in the seized diaries, taking basic sale price per *petti* / box would be as under: -

No.	AY	No. of Petties under the head “802”	Sale Price per Petti	Total Sales Consideration
1.	2020-21 (3 months)	163200	377	6,15,26,400/-
2.	2021-22	441500	377	16,64,45,500/-
3.	2022-23	373400	419	15,64,54,600/-
4.	2023-24	139000	419	5,82,41,000/-
	Total	11,17,100		44,26,67,500/-

The rates of Rs.377/- and Rs.419/- are basic sales rates as fixed by the Government since the unaccounted sales would not have any tax component. It could be seen that prior to search proceedings, the assessee has filed its Income Tax Returns disclosing Net Profit Rate of 2.07% in AY 2020-21 and NP rate of 1.32% in AY 2021-22 which has been accepted by Ld. AO. It could further be seen that the returned income as filed by the assessee post search proceedings has not been disturbed by Ld. AO and the same stand accepted.

Further, the turnover and profitability data as per assessee' return of income is as under: -

No.	AY	Sales as per ITR	Net Profit as per ITR	Net Profit Rate
1.	2023-24	25.37 Crores	34.26 Lacs	1.35%
2.	2022-23	15.09 Crores	20.38 Lacs	1.35%
3.	2021-22	17.87 Crores	23.67 Lacs	1.32%
4.	2020-21	8.04 Crores	16.67 Lacs	2.07%
	Total	66.39 Crores	94.99 Lacs	1.43%

We are of the considered opinion that the action of Ld. AO in applying Gross Profit (GP) rate is not appropriate on the facts of the case since the assessee, admittedly, has not maintained any regular books of accounts and therefore, GP rate would not yield correct estimation of business income of the assessee. Rather the application of final Net Profit (NP) rate as disclosed by the assessee and accepted by the revenue would be an appropriate yardstick to determine income earned out of unaccounted sales. Considering assessee's profitability trend and to plug leakage of revenue, we would estimate profit margin on unaccounted sales of 11,17,100 number of boxes as sold by the assessee as per seized material. The Ld. AR has quantified the unaccounted sales at Rs.44.26 Crores by taking certain rates per box and pleaded for estimation of profit margin per box against the same. We primarily concur with the said pleadings of Ld. AR since entire credit of Rs.121.64 Crores as found noted in the seized material could not be considered to be unaccounted sales of the assessee. However, the sale prices as reflected by the assessee (as tabulated in para-10 above) could not be accepted at their face value. Considering the factual matrix as well as profitability trend of the assessee, we hold that Net Profit

(NP) addition of 2.5% on entire gross business receipts as found recorded in the seized diaries would adequately take care of the revenue leakage on unaccounted sales transactions / other transactions. The addition would be over and above the returned income of the assessee. The estimation so made by us translates into profit margin of more than Rs.27/- per box for the assessee. This estimation is way higher than the regular average net profit as reflected by the assessee in its return of income. Our aforesaid estimation would yield following addition in the hands of the assessee: -

No.	AY	Total cash receipts in the seized diaries	Estimated profit @2.5% of total cash receipts
1.	2020-21	9,40,14,000/-	23,50,350/-
2.	2021-22	54,26,56,800/-	1,35,66,420/-
3.	2022-23	40,26,31,000/-	1,00,65,775/-
4.	2023-24	17,53,42,000/-	43,83,550/-
	Total	121,46,43,800/-	*3,03,66,095/-

* (Rs.3,03,66,095/- divided by 11,17,100 would translate into profit margin of more than Rs.27/- per Box for the assessee)

Considering the facts of the case, the addition for respective AYs as per above tabulation stands sustained by us as assessee's business income u/s 28. The addition thus sustained by us for all the years aggregate to Rs.303.66 Lacs (as tabulated above). The same would be over and above the returned income of the assessee. The corresponding grounds of assessee's appeals, in all the years, stand partly allowed accordingly.

11. Coming to the second issue, it could be seen that the total payment to Shri Hukum Goyal prop. M/s Jai Diamonds has been quantified as Rs.265 Lacs for all the years and the addition of

Jewellery and Gold bars for all the years has been quantified as Rs.295.48 Lacs as under: -

No.	AY	Amount (Rs. in Lacs)	Addition of Gold Jewellery and Gold Bars
1.	2020-21	Rs.75 Lacs	Rs.43.25 Lacs
2.	2021-22	Rs.52 Lacs	Rs.48.54 Lacs
3.	2022-23	Rs.38 Lacs	----
4.	2023-24	Rs.100 Lacs	Rs.203.69 Lacs
	Total	Rs.265 Lacs	Rs.295.48 Lacs

The addition of Rs.30 Lacs in AY 2021-22 with respect to payment to M/s Jai Diamond has been made on the basis of *whatsapp chat* and the same has nowhere been found noted in the seized diaries. The total payment made to M/s Jia Diamonds thus aggregate to Rs.295 Lacs and the addition of jewellery has been quantified at Rs.295.48 Lacs. It could be observed that the payment to M/s Jai Diamond for Rs.265 Lacs has been found duly recorded in Annexures A-1 to A-3 and these payments have clearly made out of business receipts only which have already been taxed by applying net profit rate. This party, evidently, has supplied gold jewellery and gold bars to the assessee. In other words, the payment has been made towards acquisition of gold jewellery, the ultimately source of which is nothing but business receipts of the assessee. We have already sustained business income addition in the hands of the assessee which far exceeds the value of jewellery as found during search on the assessee. Therefore, separate addition of payment to M/s Jia Diamond as well as addition of gold jewellery and bar, in all the years, stands deleted. The corresponding grounds of assessee's appeal stand allowed in all the years accordingly.

12. So far as the payment to Shri Sunil Bansal is concerned, we find that the conclusion of Ld. AO is not backed up by any material evidence. This party has been mentioned as “*whisky / whisky Mohali*” and is understood to be Shri Sunil Bansal without there being any concrete evidence on record. There is no linkage between the two names. During the course of assessment proceedings, summons have been issued by Ld. AO to this party which reveal that the assessee has carried out unsecured loan transactions with this party through banking channels only. The other party has confirmed the ledger of unsecured loan transactions as carried out with the assessee. The entries stood corroborated with the bank statement of that party. There is no admission of any cash payment or cash receipt by the assessee in the recorded statement. Neither there is any such admission by Shri Sunil Bansal. No tangible investment has been identified against alleged payments. In the absence of such critical evidences, the impugned addition could not be sustained in law. Pertinently, the name of this party does not figure in the seized diaries. Even otherwise, the cash payment / cash receipt against this entry stand subsumed in total cash receipts while estimating business income of the assessee. It is trite law that no addition could be made on mere presumptions, assumptions and surmises. Therefore, separate addition against this entity is devoid of any merits. The addition made by Ld. AO, in all the years, in this regard, for alleged cash payments as well as for cash receipts, stands deleted. The corresponding grounds of assessee’s appeals, in all the years, stand allowed.

13. We find that similar facts exist for addition of alleged cash payment of Rs.126.95 Lacs. This addition is merely on the basis of statement of Shri Anup Kumar Aggarwal. No such payment has been found noted in the seized diaries and no material evidence is available on record to sustain this addition. The addition is merely on loose notings. Post-search proceeding, the seller of the land was summoned by Ld. AO wherein he denied having any cash transaction in the deal. Therefore, this addition as made by Ld. AO is devoid of any merits and therefore, could not be sustained in law. We order so. The corresponding ground of appeal stand allowed. The assessee's appeals for AYs 2020-21 & 2021-22 stands partly allowed.

14. The remaining issue in AY 2022-23 is addition of Rs.10.50 Lacs against purchase of Mercedes Car. The same stem from *whatsapp* chat from the mobile phone of the assessee wherein cash amount of "10.0" was written along with total value of "22.0". The assessee stated that chat pertained to Mercedes Car purchased in the year 2021. The Ld. AO concluded that out of total value of Rs.22 Lacs, Rs.10 Lacs was paid in cash. During assessment proceedings, the assessee stated that the car was purchased way back in financial year 2019-20 through banking channels for Rs.15 Lacs out of current account of M/s Hingiri Beverages. The copy of bank statement highlighting payment of Rs.15 Lacs on 24-10-2019 was also furnished. It could thus be seen that the version of Ld. AO stood controverted by the assessee. The car was purchased way back during FY 2019-20 and the payment of Rs.15 Lacs was made through banking channels. Even as per the allegation of Ld. AO, the

payment of Rs.10.50 Lacs could not be made in cash considering the fact that the amount of Rs.15 Lacs was already paid through cheque. No independent enquiry is shown to have been carried out by Ld. AO with the other party. The conclusion drawn stood controverted by the documentary evidences as furnished by the assessee. Therefore, no such addition of alleged cash payment could be made by Ld. AO. We order so. The assessee's appeal for AY 2022-23 stands partly allowed.

15. In AY 2023-24, the assessee has assailed addition of cash found for Rs.113 Lacs. The Ld. AR has pleaded for benefit of telescoping of the addition as sustained by us. It could be seen that the addition of business income as sustained by us is Rs.303.66 Lacs. The returned income for all the years aggregates to Rs.94.99 Lacs. The total of the two is Rs.398.65 Lacs. If the value of jewellery for Rs.295.48 Lacs is deducted, the assessee is left with income of Rs.103.17 Lacs which is substantial enough to take care of the seized cash. On the given facts, the benefit of telescoping could be granted since the assessee is shown to have no other sources of income. In such an eventuality, the cash could be deemed to be generated out of unaccounted business profits. Therefore, this separate addition of Rs.113 Lacs stand deleted. The appeal for AY 2023-24 stands partly allowed.

Conclusion

16. All the appeals stand partly allowed in terms of our above order.

Order pronounced on 29th January, 2026.

-Sd-
(RAJPAL YADAV)
VICE PRESIDENT

-Sd-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated:29-01-2026

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH