

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.489/PUN/2024  
Assessment year : 2020-21**

Shivendra Jewellers Private Limited Off No.3, Vardhman Gold, CTS No.487 489, Raviwar Peth, Pune – 411002	<b>Vs.</b>	DCIT, Central Circle 2(1), Pune
<b>PAN: AAYCS7305M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Kishor B Phadke  
Department by : Shri Gaurav K Singh, JCIT  
  
Date of hearing : 26-03-2026  
Date of pronouncement : 15-04-2026

**ORDER**

**PER R.K. PANDA, VP:**

This appeal filed by the assessee is directed against the order dated 19.12.2023 of the Ld. CIT(A), Pune-12 relating to assessment year 2020-21.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the Ld. CIT(A) in confirming the penalty of Rs.44,59,003/- levied by the Assessing Officer u/s 271AAB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for assessment year 2020-21.

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of wholesale gold ornaments and silver items. A survey action u/s 133A of the Act was initiated in the case of the assessee company on

18.10.2019. Due to detection of substantial amount of cash, survey action was converted into search and seizure action u/s 132 of the Act on 19.10.2019. During the course of search action, cash of Rs.34,50,000/- was found out of which an amount of Rs.31 lakhs was seized. Although gold stock amounting to 35782.820 gms was found but nothing was seized. In the course of search action u/s 132 of the Act statement of Shri Ajitkumar Soni, director of the assessee company was recorded. In respect of cash found of Rs.34,50,000/- the assessee in reply to question No.17 had admitted that he had no explanation for cash of Rs.31,58,232/- out of the said cash found. In the post search proceedings vide letter filed on 13.12.2019 the assessee company offered Rs.31,58,323/- as sales for April 2019 to September 2019 which was not recorded in the books of account. Similarly, in the course of search proceedings gold of 35782.820 gms were found. On verification of the books of account it was seen that as per books the gold was 34554.82 gms. Thus, there was excess gold found in the possession of the assessee. Shri Ajitkumar in his reply to question No.14 confirmed that there was excess gold of 1228 gms found in the possession of the assessee company and expressed his willingness to pay taxes due on the value of the excess stock to be valued at average market rate prevailing during 01.04.2019 to 18.10.2019. The assessee in response to the notice u/s 153A of the Act filed its return of income on 31.03.2021 declaring total income of Rs.4,32,36,390/-. The return was selected for complete scrutiny and accordingly statutory notice u/s 143(2) of the Act was served. Subsequently notice u/s 142(1) of the Act along with a questionnaire was issued and served on the assessee.

4. During the course of assessment proceedings the Assessing Officer confronted the assessee as to why he has not offered an amount of Rs.31,58,323/-. The assessee explained that he had offered an amount of Rs.31 lakhs as cash and the amount of Rs.58,323/- remained to be included. The assessee submitted that the cash found and seized represents the sales of the assessee company during the period from 19.04.2019 to 04.10.2019 and this amount was accounted for in the books of account. It was submitted that the entire amount was offered for taxation and the taxes were duly paid to cover up any discrepancy. The Assessing Officer rejecting the various explanations given by the assessee levied penalty u/s 271AAB of the Act on the amount of Rs.31,58,323/-. The Assessing Officer, similarly rejecting the various explanations given by the assessee, made addition of Rs.42,73,440/- being the investment in excess gold found during the course of search and levied penalty u/s 271AAB of the Act on the above addition. The Assessing Officer in the order passed u/s 271AAB of the Act levied penalty of Rs.44,59,003/- on account of addition of the above items being the penalty @ 60% of tax sought to be evaded.

5. Before the Ld. CIT(A) the assessee challenged the penalty levied by the Assessing Officer. Relying on various decisions it was submitted that when no undisclosed income is found during the course of search, penalty u/s 271AAB of the Act deserves to be deleted.

6. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the Ld. CIT(A). He observed that the assessee had admitted the undisclosed

income during the course of assessment proceedings and has not challenged the order passed u/s 143(3) of the Act before the first appellate authority. In other words, the assessee has accepted the assessment order u/s 143(3) of the Act passed by the Assessing Officer. He referred to the provisions of section 271AAB of the Act and held that the provisions of said section are squarely applicable as the conditions stipulated are clearly attracted. He noted that search action has been initiated u/s 132 of the Act and during the course of search the statement of the assessee was recorded under sub-section (4) of section 132 of the Act wherein the assessee had admitted the undisclosed income in the specified manner in which the said income has been derived. Relying on various decisions, he upheld the penalty levied by the Assessing Officer u/s 271AAB of the Act.

7. Aggrieved with such order of the Ld. CIT(A) the assessee is in appeal before the Tribunal.

8. The Ld. Counsel for the assessee strongly challenged the order of the Ld. CIT(A) in confirming the penalty levied by the Assessing Officer. He submitted that on the date of search the books were in-complete for few days for which all these problems happened. He submitted that the assessee was in regular business and the cash so found was explained to be out of sale proceeds and therefore the same cannot be considered as undisclosed income. Referring to the assessment order he submitted that out of the amount of Rs.31,58,000/-, the Assessing Officer himself has accepted an amount of Rs.31 lakhs as regular sales and has added only

an amount of Rs.58,000/-. So far as the stock is concerned, the Ld. Counsel for the assessee referred to pages 49 to 51 of the paper book and submitted that the stock so found was about 39,893.370 gms (gross) and 35,782.820 gms (net). Referring to page 105 of the paper book he drew the attention of the Bench to the question Nos.13 and 14 in the statement recorded u/s 132(4) which read as under:

**Q.13** Now your statement is being recorded U/s 132(4) of the Income Tax Act 1961, in the case of M/s Shivendra Jewellers Pvt. Ltd. at 440 Ravivar Peth, Near Sanya Maruti Chowk, Pune 411002. During the course of survey action U/s 133A of I.T. Act 1961, initiated on 18.10.2019 in the case of M/s Shivendra Jewellers Pvt. Ltd. at 440 Ravivar Peth, Near Sanya Maruti Chowk, Pune 411002, jewellery found was valued by government approved valuer and inventorised as annexure 'C' having pages 1 to 3. As per this inventory the gold and gold jewellery valued at Gross Weight 39893.370 gms., Net Weight at 35782.820 gms. Having value at Rs. 124958281. Please reconfirm the same.

**Ans.** Yes sir I reconfirm that during the course of survey action at our business premises at 440 Ravivar Peth, Near Sanya Maruti Chowk, Pune 41100, jewellery found was valued by government approved valuer and inventorised as annexure 'C' having pages 1 to 3. As per this inventory the gold and gold jewellery valued at Gross Weight 39893.370 gms., Net Weight at 35782.820 gms. having value at Rs. 12,49,58,281/-. I have no objection for the valuation done by the government approved valuer.

**Q.14** During the course of search action U/s 132 of I.T. Act 1961, initiated on 19.10.2019 in the case of M/s Shivendra Jewellers Pvt. Ltd. at 440 Ravivar Peth, Near Sanya Maruti Chowk, Pune 411002, your sales and purchase details were taken. By referring to your sale, purchase register it is found that you have closing stock of gold and gold jewellery weighing at net weight 34.554 kgs. Whereas as per the inventory done by the government approved valuer of your gold and gold jewellery, it was found that you have closing stock gold and gold

W1

*mmk*  
19.10.19

W2

*Shivendra*  
19/10/19

*AS* 19/10/19  
Authorized Officer




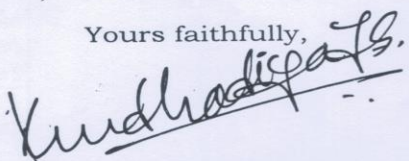
*Ajit Shivkumar Soni*  
19.10.2019  
(Ajit Shivkumar Soni)

(DR. ADITYA RAI; I.R.S.)  
Dy. Director of Income Tax (Inv.)  
Unit-2(3), Pune

jewellery of net weight at 35.782 kgs. So there is excess stock of net weight at 1.228 kgs. (35.782 kgs - 34.554 kgs) of gold and gold jewellery. Please explain the discrepancy and state why the excess gold and gold jewellery should not be seized.

**Ans.** I agree with the valuation done by the government approved valuer and I don't have any objections regarding the valuation done. I also agree with the excess stock found at business premises of M/S Shivendra Jewellers Pvt. Ltd. having net weight at 1.228 kgs. Sir I request you not to seize this jewellery as I am ready to pay due taxes on the excess stock found having net weight at 1.228 kgs as per the average market rate prevailing from 01/04/2019 to 18/10/2019.

9. Referring to the letter dated 12.03.2016 issued by the Assessing Officer, copy of which is placed at page 107 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the Annexure-5 enclosed along with the said letter, copy of which is placed at page 108 of the paper book and drew the attention of the Bench to the same which is as under:

 <p>सत्यमेव जयते</p>	<p style="text-align: center;"><b>GOVERNMENT OF INDIA</b>  <b>OFFICE OF THE</b>  <b>ASST. COMMISSIONER OF INCOME TAX,</b>  <b>CENTRAL CIRCLE-2(1), PUNE</b>  <b>Aaykar Sadan, 6<sup>th</sup> Floor, Room No.630, Bodhi Tower, 548/2B,</b>  <b>Salisbury Park, Gultekdi, Pune-411037. Phone No. 020-24263630</b>  <b>Email Id:pune.dcit.cen2.1@incometax.gov.in</b></p>
<p>No.PN/ACIT-CC-2(1)/Requisition data/SJ/2025-26/ <span style="float: right;">Date: 12.03.2026</span></p>	
<p>To,  M/s Shivendra Jewellers Pvt. Ltd  Pune</p>	
<p><b>Sub:</b> Furnishing of documents relied upon during Search/Survey in the case of M/s Shivendra Jewellers-reg.  <b>Ref:</b> Your Letter dated 12.03.2026.  *****</p>	
<p>Kindly refer to the above.</p>	
<p>2. Vide above referred letter dated 12.03.2026 the Authorised representative of M/s Shivendra Jewellers has requested to share documents relied upon during the Search/ Survey carried out on 18.10.2019 in this case to verify the stocks of jewellery.</p>	
<p>3. In this regard, please find attached the copy of <b>Annexure-‘5’</b> wherein book stock working is carried out in the case of M/s Shivendra Jewellers.</p>	
<p style="text-align: right;">Yours faithfully,    <b>(Jayanti S Kundhadiya)</b>  Deputy Commissioner of Income Tax,  Central Circle-2(1), Pune</p>	
<p><b>Encl:</b> As above.</p>	



Act when otherwise no addition is called for. He accordingly submitted that the penalty levied by the Assessing Officer and sustained by the Ld. CIT(A) be deleted.

11. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A).

12. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case levied penalty of Rs.44,59,003/- due to addition of Rs.31,58,323/- on account of unexplained cash and addition of Rs.42,73,440/- on account of excess stock of jewellery found during the course of search. So far as the unexplained cash of Rs.31,58,323/- is concerned, he noted that although the assessee has offered an amount of Rs.31 lakhs in the return of income filed and paid due taxes, however, the assessee failed to specify the manner in which the said undisclosed income was derived. Similarly, the assessee had not declared an amount of Rs.58,323/- in the return of income filed. Further, the excess stock of jewellery valued at Rs.42,73,440/- which was found during the course of search was not declared in the return of income filed. We find the Ld. CIT(A) sustained the penalty levied by the Assessing Officer on the ground that the provisions of section 271AAB of the Act are clearly applicable to the facts of the present case. Further, search had been

initiated u/s 132 of the Act and during the course of search the statement of the director of the assessee company was recorded u/s 132(4) of the Act wherein he had admitted the undisclosed income in the specified manner in which such income has been derived. It is the submission of the Ld. Counsel for the assessee that levy of penalty u/s 271AAB of the Act is untenable since the assessee has explained that the books of account were incomplete on the date of search. However, the entire cash was out of regular sales and the Assessing Officer himself has accepted an amount of Rs.31 lakhs as regular sales and has added only an amount of Rs.58,000/-. Similarly, it is also his submission that the Annexure-5 to the letter dated 12.03.2016 if considered along with page 50 of the paper book which is the valuation done by the search party, then it will be noted that the list of inventory of jewellery found during the course of search contains gold bar weighing 1356.460 gm valued at Rs.51,54,548/- whereas in the annexure to the letter there is no closing stock of gold bar in the quantity of gold calculated at 34.554 grams and thus there will be no excess stock.

13. We find some force in the above arguments of the Ld. Counsel for the assessee. A perusal of the assessment order shows that out of excess cash computed by the Assessing Officer at Rs.31,58,323/- the assessee offered an amount of Rs.31 lakhs which has been accepted by the Assessing Officer as out of regular sales and he has made addition of Rs.58,323/- only but levied penalty on the amount of Rs.31,58,323/-. Therefore, penalty, if any, in our opinion, can be levied only on the amount of Rs.58,323/-. So far as the addition on account of



penalty. It is the settled proposition of law that assessment proceedings and penalty proceedings are separate proceedings. The assessee can always make fresh arguments during penalty proceedings. Further, merely because the assessee has accepted the assessment order and has not challenged the same cannot be the basis for levy of penalty u/s 271AAB. Therefore, penalty u/s 271AAB cannot be levied due to addition on account of excess stock found during the course of search. In view of the above discussion, we are of the considered opinion that the penalty levied u/s 271AAB of the Act can be levied only on the amount of Rs.58,323/- being the excess cash found which was not declared by the assessee in the return of income. We, therefore, modify the order of the Ld. CIT(A) and direct the Assessing Officer to restrict the penalty on the amount of Rs.58,323/- not declared by the assessee. The grounds raised by the assessee are accordingly partly allowed.

15. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 15<sup>th</sup> April, 2026.

**Sd/-**  
(ASTHA CHANDRA)  
JUDICIAL MEMBER  
पुणे Pune; दिनांक Dated : 15<sup>th</sup> April, 2026  
GCVSR

**Sd/-**  
(R. K. PANDA)  
VICE PRESIDENT

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Assistant Registrar  
आयकर अपीलीय अधिकरण ,पुणे  
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	06.04.2026		Sr. PS/PS
2	Draft placed before author	08.04.2026		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Office Superintendent			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			