

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES," A" JAIPUR

श्री रमेश सी.शर्मा, लेखा सदस्य एव संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 1256, 1257, & 1258/JP/2019
निर्धारण वर्ष/Assessment Years: 2015-16 to 2017-18

Shri Nawal Kishore Soni 348, Manglam Marg, Brahmpuri Jaipur	बनाम Vs.	The ACIT Central Circle - 3 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:ACZPS 4815 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 1307, 1308, & 1309/JP/2019
निर्धारण वर्ष/Assessment Years: 2015-16 to 2017-18

The ACIT Central Circle - 3 Jaipur	बनाम Vs.	Shri Nawal Kishore Soni 348, Manglam Marg, Brahmpuri Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:ACZPS 4815 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma , CA &
Shri Rajni Kant Bhatra, CA
राजस्व की ओर से / Revenue by: Shri Ambrish Bedi, CIT DR

सुनवाई की तारीख / Date of Hearing : 11/09/2020
उदघोषणा की तारीख / Date of Pronouncement: 15/09/2020

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These are the cross appeals filed by the assessee and Revenue against three different orders of Id. CIT(A)-4, Jaipur dated 03.09.2019 for

the Assessment Years 2015-16 to 2017-18 in the matter of orders passed by the A.O. u/s 143(3) r.w.s. 153C of the Income Tax Act, 1961 (in short, the Act). The assessee and the Revenue have raised the following grounds of appeal in respective Assessment Years.

ITA No.1256/JP/2019 – A.Y. 2015-16- Assessee

- “1. That on the facts and in the circumstances of the case, the Id. CIT(A) is wrong, unjust and has erred in law in upholding rejection of books of account of the assessee by the AO by invoking the provisions of Section 145(3) of the I.T. Act, 1961 and in further sustaining addition of Rs. 10.00 lacs in the hands of the assessee on this count.*
- 2. That on the facts and in the circumstances of the case, the Id. CIT(A) is wrong, unjust and has erred in law in upholding finding recorded by the AO that the assessee has allegedly made investment of capital for alleged unrecorded transactions of Rs. 91,53,55,592/- and in further sustaining addition to the extent of Rs. 15,74,496/- on this count which was worked out on the basis of proportion of actual capital of Rs. 34,96,965/- for declared turnover of Rs. 203,30,09,914/-.*

ITA No.1257/JP/2019 – A.Y. 2016-17- Assessee

- “1. That on the facts and in the circumstances of the case, the Id. CIT(A) is wrong, unjust and has erred in law in upholding rejection of books of account of the assessee by the AO by invoking the provisions of Section 145(3) of the I.T. Act, 1961 and in further sustaining addition of Rs. 10.00 lacs in the hands of the assessee on this count.*
- 2. That on the facts and in the circumstances of the case, the Id. CIT(A) is further wrong and has erred in law in holding that loss of Rs. 17,45,527/- suffered by the assessee in respect of alleged unrecorded transactions is not eligible for set off against declared profit by wrongly invoking provisions of section 115BBE of the I.T. Act, 1961.*

ITA No.1258/JP/2019 – A.Y. 2017-18- Assessee

- "1. That on the facts and in the circumstances of the case, the Id. CIT(A) is wrong, unjust and has erred in law in upholding rejection of books of account of the assessee by the AO by invoking the provisions of Section 145(3) of the I.T. Act, 1961 and in further sustaining addition of Rs. 10.00 lacs in the hands of the assessee on this count.

ITA No.1307/JP/2019 – A.Y. 2015-16- Revenue

- "1. On the facts and in the circumstances of the case & in law the Id. CIT(A) erred right in deleting the addition of Rs. 2,20,37,862/- by ignoring the admission of the assessee that transition recorded in the "Johri Bazar" software, seized by the Department, are undisclosed transition."
2. On the facts and in the circumstances of the case & in law the Id. CIT(A) grossly erred in holding that addition of Rs. 10.00 lacs is without any reason being undisclosed profit from undisclosed transactions with MCX detected during the search by ignoring the fact of being part "Johri" software which record undisclosed transition only."
3. On the facts and in the circumstances of the case & in law the Id. CIT(A) erred in incorrectly restricting the addition of Rs. 59,17,397/- to Rs. 15,74,496/- while agreeing with the AO on the basis of addition w.r.t. capital

ITA No.1308/JP/2019 – A.Y. 2016-17- Revenue

- "1. On the facts and in the circumstances of the case & in law the Id. CIT(A) erred right in deleting the addition of Rs. 2,76,61,034/- by ignoring the admission of the assessee that transition recorded in the "Johri Bazar" software, seized by the Department, are undisclosed transition."
2. On the facts and in the circumstances of the case & in law the Id. CIT(A) grossly erred in holding that addition of Rs. 10.00 lacs is without any reason being undisclosed profit from undisclosed transactions with MCX detected during the search by ignoring the

fact of being part "Johri" software which record undisclosed transition only."

ITA No.1309/JP/2019 – A.Y. 2017-18- Revenue

- "1. Whether on the facts and in the circumstances of the case & in law the Id. CIT(A) was right in deleting the addition of Rs. 1,58,31,290/- made by the AO on account of undisclosed transaction recorded in the seized documents (software in the name of Johari Hajir) on the basis of assessee himself admitted that the transaction recorded in this software are unaccounted transactions but this fact was ignored by the Id. CIT(A).*
 - 2. Whether on the facts and in the circumstances of the case & in law the Id. CIT(A) was right in deleting the addition of Rs. 10.00 lacs made by the AO on account of undisclosed profit from unaccounted transactions with detected during the search.*
 - 3. Whether on the facts and in the circumstances of the case & in law the Id. CIT(A) was justified in allowing the appeal of the assessee holding that the addition related to MCX transactions was without any reason however the same were appearing in Johari Software but was not disclosed in regular books of accounts.*
 - 4. Whether on the facts and in the circumstances of the case & in law the Id. CIT(A) was right in deleting the addition of Rs. 2,57,00,000/- made by the AO on account of unexplained investment in purchase of gold."*
2. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. In all these cross appeals of the assessee and the revenue, common issues are involved, therefore, for the sake of convenience and brevity, a common order is being passed.

4. Rival contentions have been heard and record perused. Facts in brief are that the assessee is an individual carrying on business of trading in Bullion i.e. gold and silver as proprietor of M/s R.B. Jewellers, Jaipur. The assessee is also known in trade with the name of Babulal Lawat. A search u/s 132 of the Act was carried out on 20-12-2016 in the case of M.B. & Son Group Sikar including Ram Kumar Soni, Sikar. In course of search some documents/loose papers were found with Shri Ram Kumar Soni having notings of certain transactions of purchase of gold and payment in cash therefore allegedly showing in the name of Babulal Lawat. Thereafter survey u/s 133A of the Act was also carried out at the business premises of assessee. In course of survey cash of Rs. 8,13,139/- was found short, which assessee surrendered to tax, stock on physical verification was found short by Rs. 83,47,544/- which survey party treated it as sale by assessee out of books of accounts and estimated G.P. @ 1% thereon which assessee agreed in course of survey and thus surrendered Rs. 83,475/- to tax. Further the assessee admitted undeclared profit in purchase and sale of gold in cash amounting to Rs. 45,00,000/- which was also surrendered to tax by him. In survey a computer was found at the business premises of assessee which had a software 'Hajir' in which transaction from 24-11-2014 to 23-11-2016 of

physical purchase and sale of gold as well as transaction carried out in gold and silver on MCX Portal were found which included transactions recorded in regular books of accounts as well as which were not recorded in regular books of accounts. The assessee owned those transactions as of his and also agreed to prepare therefrom and submit the details of income/loss on account of unrecorded transactions in regular books and to pay tax thereon if any.

5. For the A.Y. 2015-16, the A.O. issued notice u/s 153C of the Act on 24-09-2018 (on the basis of documents seized from Shri Ram Kumar Soni) to assessee and in compliance thereto assessee filed return of income declaring income of Rs. 18,92,170/- as was declared in original return of income. The A.O. issued notice u/s 143 (2) and 142 (1) of the Act which assessee also complied. The A.O. completed assessment u/s 153C r.w.s. 143 (3) at an income of Rs. 6,47,89,430/- making:

- (i) an addition of Rs. 5,69,79,862/- as unexplained investment as per discussion in para – 5 of assessment order and
- (ii) an addition of Rs. 59,17,397/- as unexplained expenditure as per discussion in para – 6 of assessment order.

The assessee, thereafter moved an application u/s 154 to A.O. for rectification of apparent mistake(s) in assessment order passed by A.O. The A.O. accepted the application u/s 154 filed by assessee and vide

rectification order 08-03-2019 determined total income at Rs. 3,08,47,230/- by reducing addition of Rs.5,69,79,862/- to Rs.2,30,37,862/- addition so made in assessment order.

6. The Ld CIT(A) partly allowed the appeal of assessee and deleted the following addition.

- (i) Addition of Rs.2,20,37,862/- on account of alleged unrecorded transactions in Hazir software
- (ii) Addition of Rs.43,42,901/- on account of alleged investment of capital

The department is in appeal against the above said additions deleted by CIT (A) and assessee filed appeal against the additions sustained by CIT(A). After considering the written submission of assessee the Ld. CIT(A) restricted the addition to Rs.10,00,000/- by invoking the provisions of section 145(3) of the Act and addition of Rs.15,74,496/- by further upholding the finding recorded by the assessing officer that the assessee has made investment of capital for alleged unrecorded transactions. The present appeal is against the order of Ld. CIT(A) filed by department as well as by the assessee.

7. In the assessment order, the A.O. has also made a lump sum addition of Rs. 10,00,000/- to the income of the assessee on account of

asset profit on unaccounted transactions at MCX. By the impugned order, the Id. CIT(A) has deleted the addition.

8. The A.O. has also made addition by working out capital at Rs. 59,17,397/- being amount involved in transaction so entered by the assessee. By the impugned order, the Id. CIT(A) restricted the addition to the extent of Rs. 15,74,496/- out of total addition of Rs. 59,17,397/-.

9. Now the revenue is in appeal against deletion the addition and the assessee is in appeal against giving part relief by the Id. CIT(A) before the ITAT.

10. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that in the assessment order the A.O. estimated profits @ 1% on sales from 24-11-2014 to 31-3-2015 on transaction recorded in regular books of accounts as well as not recorded in regular books of accounts and for MCX portal transactions making a lump sum addition of Rs. 10,00,000/- without any basis while actual profit earned from those transactions was correctly worked out by assessee from record found in survey and submitted before A.O. The application of profit rate @ 1% on sales has been applied by the A.O. not because of any defect or deficiency in the

accounts but by wrongly putting stress on that the assessee in course of survey proceedings in statement accepted 1% profit rate on deemed sales for stock found short in survey. The said admission by assessee was on different facts and in different context and because of no details were found for hypothetical estimated sale of stock which was found short in course of survey with the spirit to close survey proceedings to buy peace and to cooperate with department but same could not be applied for all sales for which complete details including quantitative details are available. In respect to transaction of purchase and sale recorded in regular books of accounts the return of income computing total income from accounts audited u/s 44AB was filed declaring an income of Rs. 18,42,170/-. The return was processed u/s 143 (1) and no notice u/s 143 (2) was received within allowed time. The present assessment has been completed u/s 143 (3) r.w.s. 153C. The A.O. found no defect or deficiency in books of accounts maintained and declared op. stock, purchases, sales & closing stock including quantitative details thereof have been accepted as such by the A.O. and, therefore declared gross profit was completely verifiable and the AO should have accepted as per law. The A.O. however accepted all the transaction of sales, purchases and stock for the period 24-11-2014 to 31-3-2015 as declared

by the assessee and applied 1% G.P. rate on sale of said period while accepted the declared profit for remaining period of the year which is grossly incorrect in law. The accounts of the year have to be accepted as such for the whole year and, in law there cannot be that declared results for the part of year accepted as correct and part of the year has not been accepted as correct. Otherwise also the assessment u/s 153C has to be completed in accordance with provisions of section 153A. It is now settled law that no addition in assessment u/s 153A/153C can be made unless there is some incriminating material therefor. In view of this clear provisions of law also application of G.P. rate of 1% on sales transaction accounted in regular books of accounts for the period 24-11-2014 to 31-3-2015 is not in accordance with law and declared results are to be accepted as the purchase, sale and quantitative details have been accepted by the Assessing Officer. In respect to transaction of purchase and sales not recorded in regular books of accounts but found in 'Hajir' Software, we observe that the record found in Hajir software is correct and complete. The complete details of all transactions alongwith quantitative details are available in said record and trading A/c with the said record was prepared by assessee showing gross profit/gross loss resulted from those transaction not recorded in books of accounts. The

A.O. found no mistake, defect or deficiency therein and accepted the purchase/sales as shown in said trading account but instead of accepting the declared profit arbitrarily putting stress that assessee accepted 1% G.P. rate which is wrong as explained above, otherwise also in accordance with section 292C of the Act the contents of documents found in course of survey are to be accepted as true and no subtraction/addition/interpolation can be made in law without any corroborative and supportive material therefor and, therefore trading results i.e. gross profit arrived from the said documents found in course of survey which is correctly worked out deserves to be accepted. The Ld. CIT(A) gave his finding in para no.8 and 9 of appeal order, which is reproduced as under:

8. *In this ground the Ld. A/R has contested the application of GP rate of 1% on the entire sales (accounted and unaccounted in 'Hazir' software) of gold and silver on the basis of admission by the appellant in statement recorded u/s 131 of the I.T. Act where in appellant admitted an application of GP rate of 1% on short stock of Rs. 8347544 The text of statement can be seen on page 9 of the Ld. AO order.*

8.2 *I have closely perused the Ld. AO order and the submissions made. I am of the view learned AO is not correct in apply in uniform GP rate of 1% to accounted and unaccounted sale. The portion of statement relied upon by the Ld. AO in is on page 9 same is reproduced below:-*

प्र. 63 आपके इस व्यावसिक परिसर में कम पाये गये 83,47,544/- रूपए के कम स्टॉक का कारण स्पष्ट करने में आप असमर्थ रहे हैं, तो फिर क्यों नहीं यह माना जावे कि इस 83,47,544/- रूपए स्टॉक को आपने out of books बेच दिया है, तदनुसार क्यों नहीं इस unaccounted sale पर 1% का Gross Profit मार्जिन लगा कर कुल 83,475/-रूपए को आपकी अघोषित आय मान लिया जावे ?

उ. जी हां, मैं मेरे 83,47,544/- के कम स्टॉक को अपनी out of books unaccounted sale मान कर इस पर 1% के Gross Profit मार्जिन के हिसाब से कुल 83,475/- रूपए को मेरे शुद्ध अघोषित मुनाफा मानते हुए इसे स्वेच्छा से चालू वित्तीय वर्ष 2016-17 में करारोपण के लिए समर्पित करता हूँ तथा इस पर देय आयकर अदा करने का वचन देता हूँ ।

8.3 *It can clearly be seen that Ld. AO asked 'leading' question that why not a GP rate of 1% be not applied on the unaccounted stock of Rs. 8347544 The question posed by the investigating officer reads as under:-*

".....तदनुसार क्यों नहीं इस unaccounted sale पर 1% का Gross Profit मार्जिन लगा कर कुल 33,475/-रूपए को आपकी अघोषित आय मान लिया जावे ?....."

The appellant agreed that on this short stock a GP rate of 1% can be applied.

9. *The Ld. AO is directed to accept the books result of regular books of accounts which are duly audited and a returned income of Rs. 1892170 is filed.*

For the unaccounted transaction in silver and gold ('Hazir' software) the Ld. AR has filed a detailed P & L account. The same is reproduced by the Ld. AO onwards of the order. The Ld. A/R has taken a plea that the content of 'Hazir' software are to be taken as true and correct unless proven otherwise.

Section 292C reads as under;

.....

9.2 *There is force in the argument of the Ld. A/R 'Hazir' software and its complete printout from the same have been filed and seen by me. These unaccounted transactions are very systematically written and a Profit & Loss Account out of these are filed by the Ld. A/R before the Ld. AO and me too. There is nothing on records to suggest that these accounts and gross profit evident from it not to be accepted.*

9.3 *Accordingly, for this A.Y. following profits as computed and filed before the Ld. AO from 'Hazir' Software shall be added:*

- 1. For silver trading (period 24-11-2014 to 31-03-2015)
Rs.562647*
- 2. For gold trading (period 24-11-2014 to 31-3-2015)
Rs.1617752*

The aforesaid two additions shall be made by the Ld. AO

9.4 *Since the books of accounts are rejected I am of the view a nominal addition of Rs. 10 lacs is made in the income the appellant as a fair estimation of income as envisaged in the section 145 of the Act. "*

Accordingly, the Ld. CIT(A) deleted the addition of Rs.2,20,37,862/- and sustained the addition to Rs.10,00,000/-."

11. From the record we found that the assessee maintains correct and complete regular books of accounts with complete quantity details and

said books of accounts are audited u/s 44AB of the Act. It has been held in various judicial pronouncements that unless there is a finding or opinion either that records maintained were incorrect or incomplete or that method of accounting employed was such that income could not be deduced from accounts maintained by assessee section 145 (3) cannot be invoked and books of accounts cannot be rejected. The A.O. has not pointed out any defect or discrepancy in account books maintained by assessee and, therefore there is no ground for rejection of books of accounts maintained by assessee. The A.O. has also accepted in assessment the purchases, sales, opening & closing stock as well as declared profits in books of accounts maintained as she accepted and included the income declared by assessee in return on the basis of regular books of accounts. In such facts of the case the A.O. wrongly held that books of accounts are rejected invoking section 145 (3) which is uncalled for. As far as transactions found in 'Hazir' software of computer it records all transactions whether recorded in regular books of accounts or not recorded in regular books of accounts including transaction made by assessee on MCX Portal which are also found correct and completely maintained from which income could have been properly deduced and assessee has submitted complete account of transactions

i.e. purchases, sales and profit resulting from those transactions alongwith complete quantitative details separately i.e. accounted, unaccounted & on MCX portal in said Hazir software as is evident from assessment order itself. The A.O. also accepted the purchases, sales, op. stock & closing stock resulted from the transactions recorded therein as such in 'Hazir' software without pointing out any defect or deficiency therein and so also in law even those accounts cannot be rejected by invoking section 145 (3). The A.O. while accepting all transaction in 'Hazir' software in toto is just not accepting the profit resulted from said details which is not correct in law and so cannot be a ground for invoking section 145 (3). In view of above facts of the case the A.O. is wrong and has erred in law in rejecting books of accounts of assessee by invoking section 145 (3) of the Act.

*In case of **Paradise Holidays 325 ITR 13** it has been held that the accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable.*

*The **Hon'ble Rajasthan High Court in the case of Malani Ramjivan Jagan Nath (2009) 316 ITR 120 (2007) 163 Taxman 731** has held that account books were maintained as they were ordinarily maintained year after year which were found to yield a fair result and mere deviation in gross profit rate cannot be a ground for rejecting the books of accounts and entering the realm of estimate and guess work. The Ld. A.O. has accepted the declared purchases, declared sales, declared op. stock and*

declared closing stock thereby the Ld. A.O. had no reason to make any trading addition. The accounts of assessee are audited u/s 44AB and backed by stock tally and so the same deserves to be accepted.

In view of the above facts and circumstances of the case, the G.P. rate of 1% applied by the A.O. on the sales found recorded in 'Hajir' software is thus wrong, unwarranted and uncalled for. Further the Id. CIT(A) is also wrong and bad in law in sustaining the lump sum addition of Rs.10,00,000/- in the hands of assessee as against the addition of 2,30,37,862/- made by the Assessing officer.

12. In ground No. 2 of the appeal, the revenue has alleged deletion of addition of Rs. 10.00 lacs made by the A.O. being undisclosed profit from undisclosed transaction with MCX. In this regard, we observe that the AO in the assessment order made lump sum addition of Rs. 1000000/- to the income of the assessee on account of alleged profit on unaccounted transactions at MCX. That the profit from transaction with MCX is computable from record found in 'Hazir' software and assessee submitted before A.O. the resultant profit from MCX transaction being to Rs. 41,36,010/- which A.O. verified the same and found it correct and accepted it and added the same in income of assessee assessed by A.O. Besides that, the A.O. further made an lump sum addition of Rs. 10,00,000/- without any reason or basis or finding any shortcoming in

resulted profit computed from transaction on MCX. Thus this lump sum addition is arbitrary being without any basis or reason cannot be sustained in law and deserves to be deleted.

The Ld. CIT(A) in para no.17 of his order held that: I have perused the written submissions submitted by the Ld. A/R and the order of AO. I have also gone through various judgments cited by the Ld. AR. I find this addition is based on pure assumption and not based any incriminating seized material. That being so the addition of Rs.10 Lakh is directed to be deleted.

In view of the above the lump sum addition of Rs.10,00,000/- is purely based on surmises and conjectures and accordingly the Ld. CIT(A) is correctly deleted the same.

13. Ground No. 3 of the departmental appeal and ground No. 2 of the assessee's appeal are interlinked. In this regard, we observe that the assessing officer in the assessment order wrongly held that assessee has made investment of capital for alleged unrecorded transactions and in further working out such investment on the basis of actual investment for recorded turnover of the business. The assessing officer is thus wrong and has erred in law in working out total investment for business at Rs. 9414362/- on the basis of alleged total turnover of Rs. 5,47,31,72,177/- which is worked out by him in proportion to actual capital of Rs. 3496965/- for declared turnover of Rs. 2,03,30,09,914/-. The addition of Rs. 59,17,397/- made to the income of the assessee by the assessing

officer as alleged unexplained expenditure/capital investment on this count is unwarranted and is without any material on record. The Id. CIT(A) has dealt with this issue in para 22 of his appeal order, which is as under:

22. *I have perused the written submissions submitted by the Ld. AR and order of AO. I have also gone through various judgments cited by the Ld.AR and those contained in the order of AO:*
- 22.2 *The Ld. AO has discussed this addition in para 6 on page 10 to 12 of the order. There is a print out extracted from Hazir software copy of which has scanned on page 11 of the order. The Ld AO gave a finding that column of capital is left blank which is not possible in this case. The Ld. AO drawn support from the available figure and worked out capital at Rs.59,17,397/-.*
- 22.3 *I am in agreement with the stand taken by the Ld. AO however the turnover of Rs.2,76,63,19,000/- was erroneously taken and correct figure taken is Rs. 3,39,42,36,100/-. The Ld. AO also has taken this figure in passing the order u/s 154 of the Act. The Ld AR himself calculated the unexplained investment as 15,74,496/- which is factually correct. That being so the Ld AO is directed to sustain the addition of Rs.15,74,496/- out of Rs.59,17,397/-. The appellant get consequential relief. “*

14. We also observe that the A.O. without any basis or material held that assessee would have made investment of capital for alleged unrecorded transactions of sales/purchases found recorded in 'Hazir' software and worked out total investment for business at Rs. 9414362/- on the basis of alleged total turnover of Rs. 5,47,31,72,177/- which is worked out by him in proportion to actual capital of Rs. 3496965/- for declared turnover of Rs. 2,03,30,09,914/- and made addition of Rs.

59,17,397/- . The record found in 'Hazir' software do not have any investment of capital by assessee nor there is any credit his name otherwise also the unrecorded transactions in gold/silver are on day to day basis. The modus operandi of the business as also evident and verifiable from the Hazir software that the transaction of purchases and sales are placed simultaneously and as such capital investment is required. The buyer first makes payment and assessee delivers gold/silver which he purchased making the payment which it received from buyer and earns his profit requiring no capital investment. As the addition made is without any basis, material or reason it is just on hypothesis and arbitrary which cannot be sustained in law.

15. In the result, appeal of the revenue is dismissed whereas the appeal of the assessee is allowed.

16. Now we take appeals for the A.Y. 2016-17 (Assessee & Revenue).

With reference to the facts narrated above for the A.Y. 2016-17. The A.O. issued notice u/s 153C of the Act on 24-09-2018 (on the basis of documents seized from Shri Ram Kumar Soni) to assessee and in compliance thereto assessee filed return of income declaring income of Rs. 17,82,540/- as was declared in original return of income. The A.O.

issued notice u/s 143 (2) and 142 (1) of the Act which assessee also complied. The A.O. completed assessment u/s 153C r.w.s. 143 (3) at an income of Rs. 11,27,44,750/- making:

- (i) an addition of Rs. 11,09,62,214/- as unexplained investment as per discussion in para – 5 of assessment order and

The assessee, thereafter moved an application u/s 154 to A.O. for rectification of apparent mistake(s) in assessment order passed by A.O. The A.O. accepted the application u/s 154 filed by assessee and vide rectification order 08-03-2019 determined total income at Rs. 4,75,71,820/- by reducing certain additions so made in assessment order.

17. By the impugned order, the Ld CIT(A) partly allowed the appeal of assessee and deleted the following addition.

- (i) Addition of Rs.2,76,61,034/- on account of alleged unrecorded transactions in Hazir software
- (ii) Addition of Rs.10,00,000/- on account of alleged undisclosed transactions in MCX

The department is in appeal against the above said additions deleted by the Id. CIT (A) and assessee filed appeal against the additions sustained by the Id. CIT(A). After considering the written submission of assessee the Ld. CIT(A) restricted the addition to Rs.10,00,000/- by invoking the

provisions of section 145(3) of the Act. Further the Ld. CIT(A) in appeal order held that loss of Rs.17,45,527/- suffered by the assessee in respect of alleged unrecorded transactions is not eligible for set off against declared profit by wrongly invoking sec. 115BBE of the Act. The present appeal is against the order of Ld. CIT(A) filed by department as well as by the assessee.

18. Ground No.1 of the departmental appeal as well as the assessee's appeal are interlinked, in this regard we observe that in the assessment order the A.O. arbitrarily estimated profits @ 1% on sales during the year on transaction recorded in regular books of accounts as well as not recorded in regular books of accounts and for MCX portal transactions making a lump sum addition of Rs. 10,00,000/- arbitrarily without any basis while actual profit earned from those transactions was correctly worked out by assessee from record found in survey and submitted before A.O. The application of profit rate @ 1% on sales has been applied by A.O. not because of any defect or deficiency in the accounts but by wrongly putting stress on that the assessee in course of survey proceedings in statement accepted 1% profit rate on deemed sales for stock found short in survey. The said admission by assessee was on different facts and in different context and because of no details were

found for hypothetical estimated sale of stock which was found short in course of survey with the spirit to close survey proceedings to buy peace and to cooperate with department but same could not be applied for all sales for which complete details including quantitative details are available. In respect to transaction of purchase and sale recorded in regular books of accounts the return of income computing total income from accounts audited u/s 44AB was filed declaring an income of Rs. 17,82,540/-. The return was processed u/s 143 (1) and no notice u/s 143 (2) was received within allowed time. The present assessment has been completed u/s 143 (3) r.w.s. 153C. The A.O. found no defect or deficiency in books of accounts maintained and declared op. stock, purchases, sales & closing stock including quantitative details thereof have been accepted as such by A.O. and, therefore declared gross profit was completely verifiable and the AO should have accepted as per law. The A.O. however taken the transaction of sales for the year and applied 1% G.P. rate on sale of the year. We observe that the assessment u/s 153C has to be completed in accordance with provisions of section 153A. It is now settled law that no addition in assessment u/s 153A/153C can be made unless there is some incriminating material therefor. In view of this also application of G.P. rate of 1% on sales transaction accounted in

regular books of accounts for the year is not in accordance with law and declared results are to be accepted. In respect to transaction of purchase and sales not recorded in regular books of accounts but found in 'Hajir' Software, we observe that the record found in Hajir software is correct and complete. The complete details of all transactions alongwith quantitative details are available in said record and trading A/c with the said record was prepared by assessee showing gross profit/gross loss resulted from those transaction not recorded in books of accounts. The A.O. found no mistake, defect or deficiency therein and accepted the purchase/sales as shown in said trading account but instead of accepting the declared profit arbitrarily putting stress that assessee accepted 1% G.P. rate which is wrong as explained above, otherwise also in accordance with section 292C of the Act the contents of documents found in course of survey are to be accepted as true and no subtraction/addition/interpolation can be made in law without any corroborative and supportive material therefor and, therefore trading results i.e. gross profit arrived from the said documents found in course of survey which is correctly worked out deserves to be accepted. The Id. CIT(A) has dealt with the issue in para 8 of his appellate order, which is reproduced as under:

“I have already dealt with the issue in the appeal order for the A.Y. 2015-16. The same may be referred to. However for sake of convenience and ready reference the said findings given in para no.8 and 9 of appeal order of A.Y. 2015-16 are reproduced herein below:-

8. *In this ground the Ld. A/R has contested the application of GP rate of 1% on the entire sales (accounted and unaccounted in 'Hazir' software) of gold and silver on the basis of admission by the appellant in statement recorded u/s 131 of the I.T. Act where in appellant admitted an application of GP rate of 1% on short stock of Rs. 8347544 The text of statement can be seen on page 9 of the Ld. AO order.*

8.2 *I have closely perused the Ld. AO order and the submissions made. I am of the view learned AO is not correct in apply in uniform GP rate of 1% to accounted and unaccounted sale. The portion of statement relied upon by the Ld. AO in is on page 9 same is reproduced below:-*

प्र. 63 *आपके इस व्यावसिक परिसर में कम पाये गये 83,47,544/- रूपए के कम स्टॉक का कारण स्पष्ट करने में आप असमर्थ रहे हैं, तो फिर क्यों नहीं यह माना जावे कि इस 83,47,544/- रूपए स्टॉक को आपने out of books बेच दिया है, तदनुसार क्यों नहीं इस unaccounted sale पर 1% का Gross Profit मार्जिन लगा कर कुल 83,475/-रूपए को आपकी अघोषित आय मान लिया जावे ?*

उ. *जी हां, मैं मेरे 83,47,544/- के कम स्टॉक को अपनी out of books unaccounted sale मान कर इस पर 1% के Gross Profit मार्जिन के हिसाब से कुल 83,475/- रूपए को मेरे शुद्ध अघोषित मुनाफा मानते हुए इसे स्वेच्छा से चालू वित्तिय वर्ष 2016-17 में*

करारोपण के लिए समर्पित करता हूँ तथा इस पर देय आयकर अदा करने का वचन देता हूँ ।

8.3 *It can clearly be seen that Ld. AO asked 'leading' question that why not a GP rate of 1% be not applied on the unaccounted stock of Rs. 8347544 The question posed by the investigating officer reads as under:-*

".....तदनुसार क्यों नहीं इस unaccounted sale पर 1% का Gross Profit मार्जिन लगा कर कुल 33,475 /—रुपए को आपकी अघोषित आय मान लिया जावे ?....."

The appellant agreed that on this short stock a GP rate of 1% can be applied.

9. *The Ld. AO is directed to accept the books result of regular books of accounts which are duly audited and a returned income of Rs. 1892170 is filed.*

For the unaccounted transaction in silver and gold ('Hazir' software) the Ld. AR has filed a detailed P & L account. The same is reproduced by the Ld. AO onwards of the order. The Ld. A/R has taken a plea that the content of 'Hazir' software are to be taken as true and correct unless proven otherwise.

Section 292C reads as under;

.....

9.2 *There is force in the argument of the Ld. A/R 'Hazir' software and its complete printout from the same have been filed and seen by me. These unaccounted transactions are very systematically written and a Profit & Loss Account out of these are filed by the Ld. A/R before the Ld. AO and me too.*

There is nothing on records to suggest that these accounts and gross profit evident from it not to be accepted.

9.3 *Accordingly, for this A.Y. following profits as computed and filed before the Ld. AO from 'Hazir' Software shall be added:*

1. *For silver trading (period 24-11-2014 to 31-03-2015)
Rs.562647*
2. *For gold trading (period 24-11-2014 to 31-3-2015)
Rs.1617752*

The aforesaid two additions shall be made by the Ld. AO

9.4 ***Since the books of accounts are rejected I am of the view a nominal addition of Rs. 10 lacs is made in the income the appellant as a fair estimation of income as envisaged in the section 145 of the Act. "***

Accordingly, the Ld. CIT(A) deleted the addition of Rs.2,76,61,034/- and sustained the addition to Rs.10,00,000/-."

19. From the record we found that the assessee maintains correct and complete regular books of accounts with complete quantity details and said books of accounts are audited u/s 44AB of Act. It has been held in various judicial pronouncements that unless there is a finding or opinion either that records maintained were incorrect or incomplete or that method of accounting employed was such that income could not be deduced from accounts maintained by assessee section 145 (3) cannot be invoked and books of accounts cannot be rejected. The A.O. has not pointed out any defect or discrepancy in account books maintained by assessee and, therefore there is no ground for rejection of books of

accounts maintained by assessee. The A.O. has also accepted in assessment the purchases, sales, opening & closing stock as well as declared profits in books of accounts maintained as she accepted and included the income declared by assessee in return on the basis of regular books of accounts. In such facts of the case the A.O. wrongly held that books of accounts are rejected invoking section 145 (3) which is uncalled for. As far as transactions found in 'Hazir' software of computer it records all transactions whether recorded in regular books of accounts or not recorded in regular books of accounts including transaction made by assessee on MCX Portal which are also found correct and completely maintained from which income could have been properly deduced and assessee has submitted complete account of transactions i.e. purchases, sales and profit resulting from those transactions alongwith complete quantitative details separately i.e. accounted, unaccounted & on MCX portal in said Hazir software as is evident from assessment order itself. The A.O. also accepted the purchases, sales, op. stock & closing stock resulted from the transactions recorded therein as such in 'Hazir' software without pointing out any defect or deficiency therein and so also in law even those accounts cannot be rejected by invoking section 145(3). The A.O. while accepting all transaction in

'Hajir' software in toto is just not accepting the profit resulted from said details which is not correct in law and so cannot be a ground for invoking Sec. 145 (3). In view of above facts of case the A.O. is wrong and has erred in law in rejecting books of accounts of assessee by invoking Sec. 145 (3) of the Act.

20. In view of the above facts and submissions made herein above the G.P. rate of 1% applied by the A.O. on the sales found recorded in 'Hajir' software is thus unwarranted and uncalled for. Further the Id. CIT(A) has sustained a lump sum addition of Rs.10,00,000/- in the hands of assessee as against the addition of 2,30,37,862/- made by the Assessing officer.

21. In ground No. 2 of the appeal, the revenue has alleged Id. CIT(A)'s action in deleting addition of Rs. 10.00 lacs, which was made by the A.O. on account of profit from undisclosed transactions from MCX. In this regard, we observe that the AO in the assessment order made lump sum addition of Rs. 1000000/- to the income of the assessee on account of alleged profit on unaccounted transactions at MCX. That the profit from transaction with MCX is computable from record found in 'Hajir' software and assessee submitted before A.O. the resultant profit from MCX transaction being to (-) Rs. 9,52,665/- which A.O. verified the same and

found it correct and accepted it and added the same in income of assessee assessed by A.O. Besides that, the A.O. further made a lump sum addition of Rs.10,00,000/- without any reason or basis or finding any shortcoming in resulted profit computed from transaction on MCX. Thus, this lump sum addition is without any basis or reason cannot be sustained in law and deserves to be deleted. The Ld. CIT(A) in para no.17 of his order held that:

I have perused the written submissions submitted by the Ld. A/R and the order of AO. I have also gone through various judgments cited by the Ld. AR. I find this addition is based on pure assumption and not based any incriminating seized material. That being so the addition of Rs.10 Lakh is directed to be deleted.

In view of the above the lump sum addition of Rs.10,00,000/- is purely based on surmises and conjectures and accordingly the Ld. CIT(A) is correctly deleted the same. Accordingly, finding of Ld. CIT(A) is upheld.

22. Ground No.2 of the assessee's appeal relate to the Id. CIT(A)'s holding that loss of Rs.17,45,527/- suffered by the assessee in respect of alleged unrecorded transactions is not eligible for set off against declared profit by wrongly invoking sec. 115BBE of the Act.

23. The profit/loss as results from the purchase/sale transactions recorded in software working of which is submitted before the AO and CIT(A) in Gold and Silver trading are as follows:-

For Silver trading (01-04-2015 to 31-03-2016)	-Rs.43,63,514/-
For Gold Trading (01-04-2015 to 31-03-2016)	Rs.26,17,987/-

Net unaccounted los	Rs.17,45,527/-

The assessee during the course of appeal proceedings requested to Ld. CIT(A) for set off this loss with the accounted profit. But the Ld. CIT (A) denied to set off of said loss by invoking the provisions of Sec. 115BBE of the Act. In this connection we observe that Section 115BBE of the Act was introduced by Finance Act, 2012 w.e.f. 1-4-2013 i.e. from A.Y. 2013-14. For ready reference the provisions of section 115BBE is reproduced herein below:-

115BBE. (1) *Where the total income of an assessee,—*

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),

The income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).

We observe that Section 115BBE (2) only bars (prior to 1-4-17 before its amendment made by Finance Act, 2016) that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of Sub-Section (1) of Section 158BBE. However, the said section does not bar set off of loss in other head of income allowable under section 71 of I. T. Act from the income referred to in section 115BBE. It is from A.Y. 2017-18 by virtue of an amendment by which words 'or set off of any loss' were inserted in sub-section 115BBE that such set off of loss will be inadmissible. The CBDT explaining said amended provision of Finance Act, 2016 issued Circular No. 3/2017 dated 20-1-2017 explaining the effect of amendment which reads as under: -

46. Clarification regarding set off of losses against deemed undisclosed income.

46.1 Section 115BBE of the Income-tax Act inter alia provides that the income relating to section 68 or section 69 or section 69A or section 69B or section 69C or section 69D is taxable at the rate of thirty per cent and further provides that no deduction in respect of any expenditure or allowances in relation to income referred to in the said sections shall be allowable.

46.2 Currently, there is uncertainty on the issue of set-off of losses against income referred to in section 115BBE of the Income-tax Act. The

matter has been carried to judicial forums and courts in some cases has taken a view that losses shall not be allowed to be set – off against income referred to in section 115BBE. **However, the current language of section 115BE of the Income-tax Act does not convey the desired intention and as a result the matter is litigated. In order to avoid unnecessary litigation, the provision of sub-section (2) of section 115BBE of the Income-tax Act has been amended as to expressly provide that no set off of any loss shall be allowable in respect of income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.**

24. We observe that this amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years. Accordingly, we hold that the assessee current loss is allowable to set off against the current year income. The Hon'ble Jaipur Bench of ITAT, Jaipur Bench, Jaipur in case of *ACIT, CC-2, Jaipur vs. Girdhar Associates ITA No. 1043/JP/2013* vide order dated 04-08-2017 and *ACIT, CC-2, Jaipur vs. M/s Pitamber Commodity Futures P Ltd. ITA No. 863/JP/2017* by confirming the appeal order of CIT (A) – 4, Jaipur held that amended provisions are applicable from 01-04-2017 only and cannot be applied retrospectively. The issue in this case is thus being exactly the same and is covered by the said judgement of ITAT, Jaipur Bench, Jaipur. The CIT (A) thus is wrong and has erred in law in not allowing the set off of net unaccounted loss from the accounted income of assessee.

25. In the result, appeal of the revenue is dismissed whereas appeal of the assessee is allowed.

26. Now we take appeals for the A.Y. 2017-18 (Assessee & Revenue)

For the A.Y. 2017-18, the A.O. issued notice u/s 153C of the Act on 24-09-2018 (on the basis of documents seized from Shri Ram Kumar Soni) to assessee and in compliance thereto assessee filed return of income declaring income of Rs. 35,16,090/-. The A.O. issued notice u/s 143 (2) and 142 (1) of the Act which assessee also complied. The A.O. completed assessment u/s 153C r.w.s. 143(3) at an income of Rs. 6,41,70,460/- making:

- a) an addition of Rs. 3,02,00,000/- as unexplained investment as per discussion in para – 4 of assessment order and
- b) an addition of Rs. 3,04,54,368/- as undisclosed income/unexplained expenditure as per discussion in para – 5 of assessment order.

The assessee, thereafter moved an application u/s 154 to A.O. for rectification of apparent mistake(s) in assessment order passed by A.O. The A.O. accepted the application u/s 154 filed by assessee and vide rectification order 08-03-2019 determined total income at Rs. 3,51,74,420/- by reducing certain additions so made in assessment order.

27. By the impugned order, the Ld CIT(A) partly allowed the appeal of assessee and deleted the following addition.

- (i) Addition of Rs.1,58,31,290/- on account of alleged unrecorded transactions in Hazir software
- (ii) Addition of Rs.10,00,000/- on account of alleged undisclosed transactions in MCX
- (iii) Addition of Rs.2,57,00,000/- made on account of alleged unexplained investment in purchase of Gold

The department is in appeal against the above said additions deleted by the Id. CIT (A) and assessee filed appeal against the additions sustained by the Id. CIT(A). After considering the written submission of assessee the Ld. CIT(A) restricted the addition to Rs.10,00,000/- by invoking the provisions of section 145(3) of the Act. The present appeal is against the order of Ld. CIT(A) filed by department as well as by the assessee.

28. Ground No.1 of departmental appeal as well as assessee's appeal are interlinked. In this regard, we observe that similar issue was involved in the appeals for the A.Y. 2015-16 and 2016-17 and the reasoning given by the A.O. for upholding addition and the reasoning given by the Id. CIT(A) for partly allowing are same, therefore, following the reasoning given hereinabove for the appeals of A.Y.2015-16 and 2016-17, we uphold the finding of the Id. CIT(A) in deleting the addition made by estimating 1% profit on sales. Similarly estimated addition upheld by the

Id. CIT(A) is also deleted on the basis of very same reasoning given in the orders for the A.Y. 2015-16 and 2016-17.

29. At para no.8-page no. 7, the Id CIT(A) have observe that:

“ I have already dealt with the issue in the appeal order for the A.Y. 2015-16. Since the facts are similar the ground raised by the appellant is allowed. The same may be referred to. However for sake of convenience and ready reference the said findings given in para no.8 and 9 of appeal order of A.Y. 2015-16 are reproduced herein below:-

8. *In this ground the Ld. A/R has contested the application of GP rate of 1% on the entire sales (accounted and unaccounted in 'Hazir' software) of gold and silver on the basis of admission by the appellant in statement recorded u/s 131 of the I.T. Act where in appellant admitted an application of GP rate of 1% on short stock of Rs. 8347544 The text of statement can be seen on page 9 of the Ld. AO order.*

8.2 *I have closely perused the Ld. AO order and the submissions made. I am of the view learned AO is not correct in apply in uniform GP rate of 1% to accounted and unaccounted sale. The portion of statement relied upon by the Ld. AO in is on page 9 same is reproduced below:-*

प्र. 63 आपके इस व्यावसिक परिसर में कम पाये गये 83,47,544/- रूपए के कम स्टॉक का कारण स्पष्ट करने में आप असमर्थ रहे हैं, तो फिर क्यों नहीं यह माना जावे कि इस 83,47,544/- रूपए स्टॉक को आपने out of books बेच दिया है, तदनुसार कायें नही इस

unaccounted sale पर 1% का *Gross Profit* मार्जिन लगा कर कुल 83,475/-रुपए को आपकी अघोषित आय मान लिया जावे ?

उ. जी हां, मैं मेरे 83,47,544/- के कम स्टॉक को अपनी *out of books unaccounted sale* मान कर इस पर 1% के *Gross Profit* मार्जिन के हिसाब से कुल 83,475/- रुपए को मेरे शुद्ध अघोषित मुनाफा मानते हुए इसे स्वेच्छा से चालू वित्तीय वर्ष 2016-17 में करारोपण के लिए समर्पित करता हूँ तथा इस पर देय आयकर अदा करने का वचन देता हूँ ।

8.3 *It can clearly be seen that Ld. AO asked 'leading' question that why not a GP rate of 1% be not applied on the unaccounted stock of Rs. 8347544 The question posed by the investigating officer reads as under:-*

“.....तदनुसार क्यों नहीं इस *unaccounted sale* पर 1% का *Gross Profit* मार्जिन लगा कर कुल 33,475/-रुपए को आपकी अघोषित आय मान लिया जावे ?.....”

The appellant agreed that on this short stock a GP rate of 1% can be applied.

9. *The Ld. AO is directed to accept the books result of regular books of accounts which are duly audited and a returned income of Rs. 1892170 is filed.*

For the unaccounted transaction in silver and gold ('Hazir' software) the Ld. AR has filed a detailed P & L account. The same is reproduced by the Ld. AO onwards of the order. The Ld. A/R has taken a plea that the content of 'Hazir' software are to be taken as true and correct unless proven otherwise.

Section 292C reads as under;

.....

- 9.2 ***There is force in the argument of the Ld. A/R 'Hajir' software and its complete printout from the same have been filed and seen by me. These unaccounted transactions are very systematically written and a Profit & Loss Account out of these are filed by the Ld. A/R before the Ld. AO and me too. There is nothing on records to suggest that these accounts and gross profit evident from it not to be accepted.***
- 9.3 *Accordingly, for this A.Y. following profits as computed and filed before the Ld. AO from 'Hajir' Software shall be added:*
1. *For silver trading (period 24-11-2014 to 31-03-2015)
Rs.562647*
 2. *For gold trading (period 24-11-2014 to 31-3-2015)
Rs.1617752*
- The aforesaid two additions shall be made by the Ld. AO*
- 9.4 ***Since the books of accounts are rejected I am of the view a nominal addition of Rs. 10 lacs is made in the income the appellant as a fair estimation of income as envisaged in the section 145 of the Act. "***

Accordingly, the Ld. CIT(A) deleted the addition of Rs.1,58,31,290/- and sustained the addition to Rs.10,00,000/-.

30. In view of the above facts and circumstances made in the A.Y. 2015-16 and 2016-17, the G.P. rate of 1% applied by the A.O. on the sales found recorded in 'Hajir' software is thus wrong, unwarranted and uncalled for. Further the Ld. CIT(A) is also wrong and bad in law in sustaining the lump sum addition of Rs.10,00,000/- in the hands of

assessee as against the addition of 2,30,37,862/- made by the Assessing officer.

31. Ground No. 2 and 3 of the departmental appeal relate to deleting addition of Rs. 10.00 lacs in respect of undisclosed profit from undisclosed transactions with MCX. In this regard, we observe that similar issue has also been arisen in the A.Y. 2015-16 and 2016-17 and following the same reasoning, we uphold the order of the Id. CIT(A) in deleting addition of Rs. 10.00 lacs.

32. Ground No. 4 of the departmental appeal relates to deleting the addition of Rs.2,57,00,000/- made by the AO on account of on account of unexplained investment purchase of Gold. In this regard, we observe that in course of search at the premises of Ram Kumar Soni, Sikar a cash book was found which was seized and marked Ann. AS. Ex-12 in which certain transaction for payment of purchase of gold in between the dates of demonetization of currency were found. Thereafter in course of survey at the premises of assessee statement was recorded from the assessee in which he stated as under: -

प्र. 69 अब जबकि आपने स्वयं ने यह स्वीकार कर लिया है कि श्री रामकुमार सोनी, सीकर को नगद भुगतान करने के बारे में आपने झूठे बयान दिये थे, तो कृपया अब आप स्वयं ही यह बताने का कष्ट करें कि दिनांक 8.11.16 को नोटबंदी के बाद आपने श्री रामकुमार सोनी (Prop. M/s M.B. Sons Jewellers) को कुल कितने रूपए का भुगतान किया और क्यों किया । कृपया इसकी पूरी मॉडस ओपरेंडी भी समझाएँ ।

उ. मैं बिल्कुल ठीक-ठीक सोच सगझकर और याद करके आपको बता रहा हूँ कि नोटबंदी के बाद विभिन्न तारीखों में मैंने श्री रामकुमार सोनी से कुल 9 kg सोना खरीदा था जिसके लिए मैंने उन्हें कुल 3,02,20,000/- (अक्षरे तीन करोड दो लाख बीस हजार) रूपए का नगद भुगतान किया था । वास्तव में इस इस 9 kg सोने में से 3 किलो सोना तो मैंने उनसे खरीदकर जयपुर मंगवाया तथा यहां पर अन्य पार्टियों को मुनाफे के साथ बेच दिया । बाकी 6 Kg सोना मैंने शेखवाटी बेल्ट (सीकर, झुझुनू व चूरू जिले) की पार्टियों को वहीं से direct ही बिकवा दिया अर्थात् डिलेवरी सीधे सीकर से ही करवा दी। इसके लिए उन पार्टियों ने direct ही रामकुमार सोनी जी को भुगतान कर दिया तथा मेरा मुनाफा मुझे दे दिया । इसके लिए मैंने एवरेज 5 लाख रूपए प्रति किलो के हिसाब से कुल करीब 45 लाख रूपए का अघोषित मुनाफा कमाया ।

प्र. 70 आपने जिन पार्टियों को श्री रामकुमार सोनी, सीकर से आगे सोना बिकवाना बताया है उनका नाम, पता, विवरण उपलब्ध करवाने का कष्ट करें वरना क्यों नहीं यह माना जाए कि आपने संपूर्ण सोना खरीदने के लिए कुल 3,02,20,000/- रूपए का अघोषित स्ट्रातो से अर्जित आय से निवेश किया है ?

उ. जिन लोगों को मैंने सोना आगे बेचना (बिकवाना) बताया है, उन लोगों का नाम, पता, विवरण उपलब्ध करवाने में मैं असमर्थ हूँ । आपके इस सवाल का मेरे पास कोई उत्तर नहीं है ।

प्र. 71 आपने श्री रामकुमार सोनी से यह 9 इह सोना नये नोटों में खरीदा या पुराने नोटों में खरीदा ?

उ. मैंने श्री रामकुमार सोनी से यह 9 इह सोना समस्त पुराने नोटों में ही खरीदा ।

प्र. 72 आपने यह सोना आगे किसी को बेचा या बिकवाया, इस संबंध में कोई सबूत देने में आप असफल रहे हैं । अतः यह निष्कर्ष निकाला जा रहा है कि आपने अपनी घोषित आय से श्री रामकुमार सोनी से 9 इह सोना 3,02,20,000/- रूपए में खरीदा था । इस संबंध में आपका क्या कहना है ?

उ. मैंने सोना खरीदने के लिए कोई पैसा नहीं दिया । बल्कि हकीकत यह है कि मैंने जिन पार्टियों

को आगे सोना बिकवाया था, उन्होंने कपतमबज ही रामकुमार सोनी को भुगतान मेरे behalf पर करके मुझे मेरा मुनाफा भिजवा दिया था ।

प्र. 73 आपके बताई बात पर अगर विश्वास किया जावे तो आपने उस सोने का बेचने पर कमाये मुनाफे का फिर क्या किया ?

उ. मैंने मेरे अघोषित मुनाफे को मेरे मालवीय अरबन को ओपरेटिव बैंक, जौहरी बाजार में लोन अकाउंट में लोन के against जमा करवा दिया ।

प्र. 75 श्री रामकुमार सोनी से कुल 3,02,20,000/- रूपए में पुराने नोटों में 9 इह सोना खरीदने का स्ट्रातो स्पष्ट करने में आप असफल रहे हैं, अतः कृपया बतायें कि इस कुल 3,02,20,000/- रूपए को क्यों नहीं सोने में अघोषित निवेश के रूप में आपकी अघोषित आय मान ली जावे ?

उ. यह सोना मैंने खरीदा नहीं बल्कि कपतमबज रामकुमार सोनी से बिकवाया है । पैसा कपतमबज रामकुमार सोनी को ही मिला है । मुझे नगद में मेरा मुनाफा मिला है, जो एवरेज 5 लाख रूपए प्रति किलो के हिसाब से करीब 45 लाख रूपए बनता है जिसे मैं मेरे अघोषित मुनाफे के रूप में चालू वित्त वर्ष में करारोपण के लिए समर्पित करता हूँ । यह मेरा शुद्ध अघोषित मुनाफा है जिस पर मैं आयकर अदा करने का बचन देता हूँ ।

The assessee accordingly surrendered Rs. 45,00,000/- as his profit in purchase & sale of 9 kg gold from Ram Kumar Soni and the said undisclosed income was declared by assessee in accordance with section 199C of Taxation Laws (Second Amendment) Act 2016 in PMGKY (Pradhan Mantri Garib Kalyan Yojna) in which assessee declared income of Rs. 1,05,50,000/- as per details thereof given in affidavit filed which includes said undisclosed income of Rs. 45,00,000/- also. The Pr. Commissioner of Income Tax also issued prescribed certificate in respect to declaration under PMGKY (copies of all documents submitted). In annexure AS, Exhibit – 12 i.e. cash book found and seized from Ram Kumar Soni, Sikar following transaction of receipt of amount in the name of Babu Lal Lawat i.e. assessee were found

Date	(Amount in Rs.)	Narration	Page No. of Ex-12
19.11.16	5500000	Sh. Babu Lal ji Lawat	221
22.11.16	12500000	Sh. Babu Lal ji Lawat	224
02.12.16	2000000	Sh. Babu Lal ji Lawat	236
03.12.16	1550000	Sh. Babu Lal ji Lawat	237
08.12.16	800000	Sh. Babu Lal ji Lawat	243
08.12.16	1400000	Sh. Babu Lal ji Lawat	243
11.12.16	800000	Sh. Babu Lal ji Lawat (7450/- लेना रहा)	247

13.12.16	145000	Sh. Babu Lal ji Lawat	249
14.12.16	100000	B.L. Lawat	250
	2,47,95,000		

The A.O. issued show cause notice dated 10-12-2018 taking above transactions totaling to Rs. 2,47,95,000/- and also taking one other entry found noted in said exhibit being deposit of Rs. 1,10,00,000/- in PNB (Punjab National Bank) in A/c of Ram Kumar Soni that why the said transactions totaling to Rs. 3,47,95,000/- be not treated his unexplained income. The assessee filed explanation to above show cause notice stating

(A) The assessee purchased five kg. gold on the following dates:-

<u>Date</u>	<u>Particulars</u>	<u>Amount (Rs.)</u>
19-11-2016	1 kg.	36,00,000.00
21-11-2016	4 kg.	<u>1,44,00,000.00</u>
		<u>1,80,00,000.00</u>

The payment of the above gold purchased was made on the following dates:-

19-11-2016	Rs.	55,00,000.00
23-11-2016	Rs.	<u>1,25,00,000.00</u>
		<u>1,80,00,000.00</u>

(B) Reconciliation with the Transactions mentioned in your show cause notice.

Date	Amount(Rs)	Narration
19-11-2016	5500000	Reconciled with the payment transaction dated 19-11-2016 stated above – also from Johari Software.
21-11-2016	11000000	It is evident from the narration against the transaction in your show cause notice that the transaction is of deposit in PNB – (name of Babu Lal is not mentioned against the entry of cash

		deposit). The alias name Babu Lal of the assessee is written below the said cash deposit in bank – transaction – and nature of transaction is purchase of 4 kg. gold @ 3600000 per kg. Total value Rs. 1,44,00,000/- out of the said amount a sum of Rs.1,25,00,000/- was paid on 23-11-2016 – as stated in the chart marked as 'A' Supra. Thus the transaction of Rs.1,10,00,000/- does not pertain to assessee.
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(C)

Transactions from 02-12-2016 to 14-12-2016 total amount Rs. 6795000/-	As per copy of statement of account of Shri Ram Kumar Soni supplied by your goodself it is verifiable that there was a purchase of 2 kg. gold on 02-12-2016 @ 3300000/- per kg. gold value Rs. 66,00,000/-. As verifiable from the seized record that after 23-11-2016 no record of the alleged transactions is found with the assessee during the course of survey and assessee also submits that he has no record for the said transactions. However in this regard it is submitted that except a cash payment of Rs.200000 on 02-12-2016 balance payment was made in instalments from the sale proceeds of the said gold sold. In this connection it is also submitted that the payment of Rs.200000 on 02-12-2016 was also made from the advance amount against sales received from customers.
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D. In view of the above said facts, as evident and verifiable from the seized record itself that the total amount of transactions was Rs. 1,80,00,000 + 66,00,000 = 2,46,00,000/- and not Rs. 3,57,95,000/-. It appears that the working by the department has been done by adding debit and credit both the side of transactions in the account i.e. the purchase of gold of Rs. 1,80,00,000 and payment thereof of said amount has been considered/taken twice at Rs.3,57,95,000/- i.e. aggregate amount of debit and credit of transactions with Mr. Ram Kumar Soni.

It is further submitted as the cash payment transaction of (Rs.55,00,000 + 1,25,00,000) = Rs.1,80,00,000/- is verifiable from the impounded Johari Software and accordingly the source of payment of said amount is explained and as such no further addition by adding both the side i.e. Dr. and Cr. Of amount as mentioned in show cause notice deserves to be made as the said action would be adding the same amount twice.

The violation of terms of the notification No.2652 of Ministry of Finance could not be basis of addition in income-tax assessment proceeding on account of trading transactions on which only margin of profit/income can be assessed to tax. As the assessee has already declared an income of Rs.1,05,05,000/- on account of transaction not recorded in regular books include/transactions with Shri Ram Kumar Soni in his return of income(s). Further the assessee also opted the PMGKY and deposited the tax due as per provisions of said Scheme and also purchased the bonds. The documentary evidences in this regard has already been filed.

As per above facts of the case show cause given for making an addition of Rs.3,57,95,000/- is wrong against the facts of the case and it is requested that no such addition is warranted as proposed.

33. The A.O. as per discussion in assessment order mainly on the ground that assessee has not provided the names and address of those parties to whom he has sold gold rejected the explanation of assessee while accepting the explanation of assessee in respect to entry of Rs. 1,10,00,000/-. This left the entries of receipt of amount of Rs. 2,47,95,000/- by Ram Kumar Soni from Babu Lal Lawat i.e. assessee which was only for purchase of 7 kg gold. However, the A.O. on the basis of statement of assessee that he purchased 9 kg gold for Rs. 3,02,00,000/- from Ram Kumar Soni which was sold by him took into consideration the amount of Rs. 3,02,00,000/- and added the same to the income of assessee as undisclosed investment and also invoked provisions of section 68 and 115BBE of I.T. Act and subjected the same to tax @ 60%.

34. In this connection we observe that in above explanation of assessee in para – D was incorrect as at that time details were not provided by A.O. and assessee misunderstood facts while correct position is that A.O. took transactions of Rs. 2,47,95,000/- found noted in cash book of Ram Kumar Soni and transaction of Rs. 1,10,00,000/- deposit in PNB in A/c of Ram Kumar Soni while giving show cause for the sum of Rs. 3,47,95,000/-. The A.O. adopted amount of Rs. 3,02,00,000/- as per statement of assessee for purchase and sale of 9 kg gold while entries found in cash book of Ram Kumar Soni was for 7 kg gold for Rs. 2,47,95,000/-. As the assessee admitted purchase and sale of 9 kg gold for Rs. 3,02,00,000/- and also admitted the profit earned thereon amounting to Rs. 45,00,000/- and so same is not being disputed.

35. It is evident from entries found in cash book of Ram Kumar Soni and from statement recorded from assessee in course of survey that assessee purchased gold in period of demonetization which was obviously for sale to persons on receiving cash from them as the same is normal practice of gold trade. The gold purchased in period of demonetization was towards agreed sale to persons on receiving amount therefor from those persons. Thus the source of payment to Ram Kumar Soni for purchase of gold is out of amount received from its sales and so

it is to be treated as properly explained. It is only profit on sale of said purchased gold which is income of assessee which was undisclosed income of assessee and the same could only be subjected to tax. It is settled law that in case of unaccounted sales only profit therefrom could only be taxed as income of assessee. The assessee relies on the judgement of ITAT, Ahmedabad Bench in case of DCIT Vs. Brijvasi Developers P. Ltd. ITA No. 290/Ahd/2013 order dated 17-5-2017. The payment for purchase gold is not made by assessee from his own but the same is either settled by direct payment to seller by buyer and/or payment made from advance from customer or credit from sales as per normal trade practice. The assessee admitted such profit at Rs. 45,00,000/- and disclosed that income in PMGKY, 2016 and paid due tax thereon. The assessee has not noted name(s) of person(s) whom gold was sold by him. In unrecorded transactions neither the purchaser informs his name neither assessee require it as the dealing ins cash based and even if name and address is given the person will not be found there or will deny it. Thus when the entries clearly reveals that transactions are of unrecorded purchase and sale of gold which A.O. also admits in assessment order than simply that name & address of purchasers are not provided the entire amount of sale cannot in law be

treated as undisclosed income, only profit earned from said transactions which has been admitted by assessee at Rs. 45,00,000/- can only be assessed to tax. We also observe that assessee had disclosed in PMGKY the said undisclosed income of Rs. 45,00,000/- and paid tax in accordance with scheme and received certificate therefor from Pr. Commissioner of Income Tax, hence the same disclosed income cannot be included as income in assessment as per Section 199-I of PMGKY. However, the A.O. has allowed credit of amount of disclosed income in PMGKY from total income and so there being no consequence to assessee so the same was not objected to.

36. The Ld CIT(A) in para 23 of appeal gave his findings. For ready reference the said findings are reproduced herein below:-

23. I have perused the written submissions submitted by the Ld. A/R and the order of AO. I have also gone through various judgments cited by the Ld. A/R. I have also gone through the relevant pages in the paper book filed by the Ld. A/R. It is seen that in course of search at the premises of Ram Kumar Soni, Sikar a cash book was found which was seized and marked Ann. AS. Ex-12 in which certain transaction for payment of purchase of gold from Ram Kumar Soni were noted in the name of Babu Lal Lawat (appellant) in between the dates of demonization of currency totalling to 2,47,95,000/- and these transactions were unaccounted transactions for purchase and sale of gold in period post demonetization. These transactions were for purchase/sale of 7 Kg gold. However appellant in his statement dated 24-12-2016 u/s 131 admitted sale/purchase of 9 kg gold for Rs. 3,02,20,000/- and stated that gold was purchased by him from Ram Kumar Soni and directly sold to people of nearest place(s) who themselves made direct payment to Ram Kumar Soni and he only earned profit on such transaction of sale of 9 kg gold which he admitted to be

@ Rs. 5,00,000/- per kg total Rs. 45 Lakhs. This income was later on disclosed under the provisions of PMGKY Scheme, 2016. The Ld. AO in assessment order on the basis of statement of appellant that he purchased 9 kg gold for Rs. 3,02,00,000/- from Ram Kumar Soni which was sold by him took into consideration the amount of Rs. 3,02,00,000/-. The AO held that these transactions were through old demonetization currency which was barred transaction under demonetization scheme. The AO therefore required appellant to furnish details related to parties to whom gold was so sold and on failure of appellant to provide such details the AO made addition of Rs. 3,02,00,000/- in income of appellant u/s 68 r.w.s. 115BBE of the Act.

23.2 It is evident from entries found in cash book of Ram Kumar Soni and from statement recorded from appellant in course survey that appellant purchased gold in period of demonetization which was for sale to persons on receiving cash from them as the same is normal practice of gold trade.

23.3 I find that the Ld. AO also in assessment order has not held that the transaction of sale are not from purchases by appellant or it was out of unaccounted stock of appellant but on the inability to give the identity of purchasers of gold he made addition of total sale price of Rs. 3,02,00,000/- in the income of appellant.

Further the payments to Ram Kumar Soni also appear in Hazir software seized in course of survey which contain the unaccounted purchase/sale of appellant. Thus the source of payment to Ram Kumar Soni for purchase of gold is to be taken out of amount received from its sales and so it is to be treated as explained.

23.4 It is settled law that not only from the illegal business but also the unaccounted transaction of purchase and sale only profit/ income on sales could be assessed as undisclosed income and could be subjected to tax. Case laws to the point are as under:

- 1. Dr. T.A. Quereshi (157 taxmann.com 514) (Supreme Court)*
- 2. Piara Singh (124 ITR 40) (Supreme Court)*
- 3. S.C. Kothari (82 ITR 794) (Supreme Court)*

23.5 The appellant admitted such profit at Rs. 45,00,000/- and disclosed that on said transactions income in PMGKY, 2016 and paid due tax thereon. The

copy of certificate issued by PCIT is placed on record. Thus when that transactions are of unrecorded purchase and sale of gold, which Ld. AO also admits in assessment order, then simply that name & address of purchasers are not provided the entire amount of sale cannot in law be treated as undisclosed income, only profit earned from said transactions which has been admitted by appellant at Rs. 45,00,000/- can only be assessed to tax more so when the appellant has disclosed in PMGKY the said undisclosed income of Rs. 45,00,000/- and paid tax in accordance with scheme and received certificate there for from Pr. Commissioner of Income Tax, hence the same disclosed income cannot be included as income in assessment as per Section 199-I of PMGKY. However Ld. A.O. has allowed credit of amount of disclosed income in PMGKY from total income as so the addition on this account is restricted to Rs. 45,00,000/- and balance is deleted. The appellant thus gets relief of Rs. 3,02,00,000-45,00,000 = Rs. 2,57,00,000/-."

In view of the above facts and submissions made herein above the Ld. CIT(A) is correct in deleting the addition of Rs.2,57,00,000/- made by the AO on account of alleged undisclosed investment in purchase of Gold.

37. In the result, all the appeals of the revenue are dismissed whereas all the appeals of the assessee are allowed.

Order pronounced in the open court on 15/09/2020.

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/09/2020.

*Ranjan

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

1. अपीलार्थी / The Appellant-Shri Nawal Kishore Soni. Jaipur

2. प्रत्यर्थी / The Respondent-The ACIT, Central Circle - 3, Jaipur

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1256 to 1258/JP/2019 & 1307 to 1309/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar