

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **1046, 1047, 1048, 1049, 1050 &
1051/CHNY/2024**

निर्धारण वर्ष/Assessment Years: 2016-17, 2017-18, 2018-19, 2019-20,
2020-21 & 2021-22

M/s. Gold AIK,
No.8, Kader Mydeen Palliva
Street, Kadayanallur,
Tenkasi – 627 751.

The Income Tax Officer,
Vs. Central Circle 3(3),
Chennai.

PAN: AAKFG 3545L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Abhishek Murali, CA

प्रत्यर्थी की ओर से/Respondent by : Smt. R. Anita, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 23.10.2024

घोषणा की तारीख/Date of Pronouncement : 06.11.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These six appeals by the assessee are arising out of different orders of the Commissioner of Income Tax (Appeals), Chennai-20 in Order Nos.ITBA/APL/S/250/2024-25/1061380760(1), 1061388638(1), 1061388883(1), 1061389173(1), 1061389451(1)

&1061389717(1)of even date 23.02.2024. The assessments were framed by the Deputy Commissioner of Income Tax / Assistant Commissioner of Income Tax, Central Circle 3(3), Chennai u/s.153Aof the Income Tax Act, 1961 (hereinafter the 'Act') for the assessment years 2016-17 to 2019-20and by the Assistant Commissioner of Income Tax, Central Circle 3(3), Chennai u/s.143(3) r.w.s. 153A / 143(3) r.w.s. 153B(1)(b) of the Act for the assessment years 2020-21 & 2021-22 vide orders of even date 31.03.2022.

2. The first two interconnected common issues in these six appeals of assessee is, first, as regards to the orders of CIT(A) confirming the action of AO in estimation made on gross profit whereas estimation should have been made on net profit basis and also on historical data and the profit rate in the line of business and second is as regards to enhancement made by CIT(A) by making disallowance u/s.40A(3) of the Act when the AO and CIT(A) made estimation on gross profit. The facts and circumstances are exactly identical in all these years and issues are also exactly identical and grounds raised by the assessee are also identical, hence, we will take the facts & grounds from **ITA No.1046/CHNY/2024** for assessment year 2016-17 and will decide the interconnected issues.

The relevant grounds of the above two interconnected issues are as under:-

vii. The Learned AO/CIT(A) erred in confirming the addition towards gross profit based on the evidences collected from the third party without giving the opportunity of cross examination.

viii. The Learned AO/CIT(A) ought to have seen that the legal presumption u/s 132(4A) that the content of the seized material are true and correct is applicable only in respect of the searched person and not in respect of the other person.

ix. The Learned AO/CIT(A) erred in directing the assessing officer to disallow Rs.10,17,517/- under section 40A(3) without giving the opportunity of cross examination in violation of the principles of natural justice.

x. The Learned AO/CIT(A) ought to have seen that the above Rs. 10,17,517/- includes payments which were made through banking channels and thereby section 40A(3) is not applicable.

xi. The Learned AO/CIT(A) ought to have seen that when the gross profit is calculated on presumptive or estimation basis of turnover, disallowances u/s 40A(3) cannot once again be made.

xii. The Learned AO/CIT(A) ought to have noted that the same is already factored into the gross profit calculation.

3. Brief facts are that the assessee is a partnership firm engaged in the business of retail sale of gold in the name and style of M/s. Gold AIK. A search u/s.132 of the Act was conducted in the case of Mohalal Jewellers Pvt. Ltd., (in short 'MJPL') and Shri Suresh Khatri & Others on 10.11.2020. From the search conducted on MJPL, incriminating documents relating to assessee was found and information gathered there from, a search was conducted on the business premises of the assessee firm and the residential premises of Shri Amanullah, the Managing Partner of the assessee firm on

10.11.2020. During the search, statements of accountant of the assessee Shri Mohammad Anees and the Managing Partner of the assessee Shri Amanullah was recorded u/s.132(4) of the Act on 10.11.2020 and both of them have stated that they purchase gold from MJPL. They answered various queries and stated that sale consideration for purchase of gold by assessee firm is paid in three modes i.e., 1) by way of exchange of old gold bars 2) payment through RTGS and 3) by way of cash. During the course of search at the premises of the assessee, Income-tax Department found Whatsapp chats, Whatsapp images in the mobile of Shri Mohammad Anees, the accountant and Shri Ashwin, employee of MJPL, with regards to purchase of gold from MJPL and also came to know about the modus operandi of cash payment by assessee firm by issuing of old gold by assessee firm to MJPL etc. The AO in his assessment order noted that Shri Mohammad Anees confirmed the chats from Shri Ashwin. Shri Ashwin the employee of MJPL vide his statement recorded u/s.132(4) of the Act dated 10.11.2020 also confirmed the chats. During the course of search on MJPL, Income-tax Department found transactions of gold, old gold exchange, purchase of gold in cash recorded in ledger maintained in the name of 'AMANULLA KDR' in J-Pack software. According to AO, the transactions recorded in 'Amanulla KDR' in J-Pack software by MJPL are its unaccounted

business transaction with various retailers including the assessee firm. The AO further recorded that the J-Pack software is used for recording of accounted and unaccounted transactions of MJPL as stated on oath by Shri Suresh Khatri while replying to question No.27 of statement recorded u/s.132(4) of the Act on 11.11.2020. When the 'Amanullah KDR' extracted from J-Pack software was maintained by MJPL was confronted to salesman and accountant of Shri Mohammad Anees, he replied during statement recorded u/s.132(4) of the Act that transactions recorded in ledger 'Amanullah KDR' pertains to the assessee firm and these transactions are either exchange of old gold or cash transactions entered into by assessee firm with MJPL. He also admitted that the transactions are not recorded in the books of the assessee firm. Further, during search in the case of Shri Suresh Kathri of MJPL on his residential premises on 10.11.2020, one loose sheet containing party balance as on 08.11.2020 was found and seized. When these loose sheets was confronted to the Managing Partner of assessee firm, Shri Amanullah and accountant of Shri Mohammed Anees, both confirmed that 'Amanullah KDR' refers to exchange of old gold and cash transactions entered with the assessee firm as on 08.11.2020. Subsequently, statement was recorded u/s.131 of the Act on 02.12.2020 of Shri Amanullah, the Managing Partner of the assessee

firm, wherein he agreed that the transactions contained in 'Amanullah KDR' belongs to assessee firm and admitted the consolidated transactions reflected in 'Amanullah KDR' from Assessment years 2016-17 to 2020-21 as noted in J-Pack. The AO noted that Shri Amanullah, the Managing Partner of the assessee firm subsequently stated that the gold of 1010 Kgs was purchased from Shri Suresh Khatri of MJPL during the above mentioned period and also made payment of 1003 Kgs of old gold and cash of Rs.108 Crores with respect to purchases made from MJPL. Accordingly, the AO noted the consolidated transaction of gold, exchange of old gold, cash transaction of assessee firm with MJPL for Financial year 2016-17 to 2020-21 as per 'Amanullah KDR' accounting J-Pack software, which the managing partner of the assessee firm as well as employees admitted the transaction entered into with MJPL. The AO has brought out the complete chart in his assessment order as under:-

<i>FY</i>	<i>Receipt</i>			<i>Issued</i>		
	<i>Metal (gms)</i>		<i>Cash (Rs)</i>	<i>Metal (gms)</i>		<i>Cash (Rs)</i>
	<i>Gross</i>	<i>Net</i>		<i>Gross</i>	<i>Net</i>	
<i>2015-16</i>			<i>1017517</i>	<i>5857.62</i>	<i>5417.85</i>	
<i>2016-17</i>	<i>173626.71</i>	<i>164773.4</i>	<i>207676350</i>	<i>181761.55</i>	<i>172557.3</i>	<i>215284912</i>
<i>2017-18</i>	<i>253446.2</i>	<i>240284.33</i>	<i>203227040</i>	<i>2645612.65</i>	<i>251073.35</i>	<i>199034830</i>
<i>2018-19</i>	<i>223370.7</i>	<i>212493.66</i>	<i>114332726</i>	<i>217163.78</i>	<i>206367.33</i>	<i>117575015</i>
<i>2019-20</i>	<i>270345.9</i>	<i>257801.71</i>	<i>324996894</i>	<i>273004.52</i>	<i>260673.07</i>	<i>336985974</i>
<i>2020-21</i>	<i>133913.13</i>	<i>128097.49</i>	<i>229608514</i>	<i>119953.03</i>	<i>114788.21</i>	<i>231463137</i>
<i>Total</i>	<i>1054702.64</i>	<i>1003450.6</i>	<i>1080859041</i>	<i>1062353.51</i>	<i>1010877.11</i>	<i>1100343868</i>

The AO after discussing, the statements recorded, noted the unaccounted sale of jewellery received from MJPL by the assessee and for relevant assessment year 2016-17, he noted from the seized material that the total gold ornaments from the assessee firm by MJPL during financial year 2015-16 relevant to this assessment year 2016-17 is of 5417.85 grams, which was treated as unaccounted sales of the assessee firm during the year under consideration and he computed the average value of this gold at Rs.1,36,05,133/-. The AO computed this by taking the average value of valuation on the basis of RBI data as under:-

<i>Average annual value of the 10 gms of gold (24 Carat) during the FY.2015-16</i>	<i>Rs.27414.55/10 gms (As per data taken from official website of Reserve Bank of India)</i>
<i>Average annual value of the 1 gm of gold (24 Carat) during the FY 2015-16</i>	<i>Rs.2741.45/gm</i>
<i>Average annual value of the 1 gm of gold (22 Carat i.e., 91.6%) during the FY.2016-17</i>	<i>Rs.2511.17/gm</i>
<i>Average annual value of the 5417.85 grams of gold (22 Carat i.e. 91.6%) during the FY. 2016-17</i>	<i>Rs.1,36,05,133</i>

Accordingly, he estimated the profit on unaccounted sale of jewellery at Rs.16,32,616/- and added to the returned income of the assessee.

3.1 The AO also made addition of unaccounted cash pertaining to financial year 2015-16 relevant to this assessment year 2016-17

at a sum of Rs.10,17,517/- and added the same u/s.69A of the Act as unaccounted cash. The AO computed this cash on the basis of above chart where, according to AO, the entire unaccounted cash to the tune of Rs.108,08,59,041/- was given to MJPL during the period, financial years 2015-16 to 2020-21. Accordingly, addition of unaccounted cash on this assessment year 2016-17, of Rs.10,17,517/- was made. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) consolidated both the issues and deleted the addition of unexplained cash added by AO u/s.69A of the Act amounting to Rs.10,17,517/- but sustained the addition of gross profit and directed the AO that only gross profit on unaccounted sales of unaccounted purchases is to be taxed by applying gross profit rate of 8.49% instead of net profit applied by AO at 12%. The CIT(A) recorded his findings in para 7.3 to 7.3.8 as under:-

7.3.1 Vide above Grounds, appellant has challenged addition made towards 'Unexplained Jewellery', Unaccounted cash' and 'net profit @12% on Gold purchased from M/s MJPL'. As the issues raised vide Grounds above are interrelated and intertwined in such a way that they can't be taken up independently. Hence, above Grounds are clubbed together and adjudicated as under.

7.3.2 During course of search in M/s MJPL, one J Pack software was found which was admittedly used to record unaccounted transactions entered into by M/s MJPL with retailers of Gold Jewellery like that of Appellant firm. During search, one ledger named 'Amanullah KDR' was found. It was

identified by MD of M/s MJPL, as account use to record gold sales to Gold AIK, Kadanallur whose managing partner is Sri Amanullah. As stated above employee of appellant firm and Managing partner of appellant firm during the course of search itself agreed that transactions recorded in 'Amanullah KDR' pertain to Gold AIK and those transactions are not recorded in books. The appellant firm found to purchase Gold from M/s MJPL. Consideration is paid partly in the form of Old Gold, cash, payments RTGS. Only purchases for which payment is made through RTGS is recorded in books of appellant firm. The AO has added Cash paid to M/s MJPL as consideration which is not recorded in books as unaccounted cash u/s 69A.

7.3.3 It is the contention of appellant that provisions of section 69A are not applicable since the appellant is not found in possession of cash during search in its case. The appellant can't be treated as owner of cash basing on entries made in some third-party unaudited accounts. Further, sworn statements of employee and Sri Amanullah alone can't be relied upon to conclude that appellant is owner of cash without any other corroborative evidence. The AO has wrongly used statements recorded subsequent to search to conclude that transactions recorded in 'Amanullah KDR' ledger account in J pack software pertain to appellant. The AO has erroneously considered RTGS transactions, gold transactions that are recorded in books also as Unexplained jewellery and unaccounted cash. Net profit of 12% adopted by AO to tax profit on Gold purchased from M/s MJPL is without any basis. The AO ought to have adopted net profit of 1% only which is the usual net profit obtained by appellant. It is also argument of appellant that in case of other retailers who had similar cash and Gold transactions with M/s MJPL wrt unaccounted Gold purchases from that company, department has only taxed Gross profit on unaccounted sales on par with Gross profit admitted by those parties in previous years whereas appellant is discriminated having subjected total unaccounted payment of Gold as Unexplained jewellery and Unaccounted payment of cash as Unaccounted cash and 12% of Net profit on Unaccounted sales to tax.

7.3.4 I have carefully examined each of contentions of appellant. It is observed that the appellant is not denying transactions as per 'Amanullah KDR' Ledger account found in J Pack software. It is only claim of appellant that even payments made through RTGS are considered for arriving at unaccounted income in hands of appellant. Further appellant is questioning correctness of taxing the transactions u/s 69A. During appeal proceedings, the appellant is asked to furnish copy of ledger account of M/s MJPL in its books which contains transactions entered into with M/s MJPL that are

recorded in its regular books. It is noticed that the appellant has not filed any ledger account as far as Assessment year 2016-17 is concerned. Therefore, it is considered that neither cash payment nor unaccounted purchase of Gold from M/s MJPL during the year are recorded in regular books of Appellant.

7.3.5 It is noticed that the AO in the assessment order mentioned that both employee of Appellant firm as well as Managing partner of Appellant firm claimed that sale consideration w.r.t. unaccounted gold purchases from M/s MJPL are made by appellant in the form of old Gold, partly in cash and through RTGS also sometimes. Since Gold purchase transactions are not recorded in books, payment made for such purchases are also not recorded in books. Consequently, sale transactions of unaccounted Gold purchased from M/s MJPL are also not recorded in books. It is well established law that entire unaccounted purchases or Unaccounted sales can't be subjected to tax. But only profit element embedded in it. In the present case, the appellant neither recording purchases from M/s MJPL in books nor sale of gold jewellery purchased from that company in books. Seized material shows that appellant did incur expenditure for unaccounted purchases in the form of gold as well as cash for other years. But for the year under consideration it is noticed that the payment is made in cash only of Rs10,17,517/- as far as transactions found in J Pack Software are concerned. Ultimately income for appellant in this entire transaction is Profit on sale of Unaccounted purchase of gold jewellery made from M/s MJPL. It is to be considered that sale receipts from unaccounted sales are utilised for payment of cash for subsequent purchases of Gold from M/s MJPL, similarly investment in old Gold/gold bars which is also used as purchase consideration is also funded by unaccounted sales. When both purchase and sale transactions are not recorded in books, Hon'ble courts in following cases held that only Gross profit from sale transactions is to be subjected to tax.

1. JK Ramesh Gandhi Vs DCIT, ITA No: 547/Chny/2021:

During the course of survey, unaccounted purchases & unaccounted sales were noticed. The assessee had admitted unaccounted purchases & unaccounted sales and also offered gross profit on unaccounted sales as income for the AYs 2015-16 to 2017-18 and filed revised return and also paid taxes. The AO, once again, made addition towards unaccounted purchases on the ground that source was not explained. We do not agree with the reasons given by the AO for the simple reason that when survey team was noticed

unaccounted purchases & unaccounted sales and also difference has been treated as unaccounted income of the assessee, then question of making further additions towards unaccounted purchases does not arise. Moreover, it is only net result of unaccounted purchases & unaccounted sales, needs to be taxed.

2. CIT Vs Hariram Bhambhani, Bombay High Court:

The entire unaccounted sales cannot be assessed as undisclosed income particularly if the purchases have been accounted for. Only the net profit on such unaccounted sales can be taken as income.

3. PCIT Vs Rameshwar Textiles Mills Ltd, Tax Appeal 527& 528/2015Guj HC:

Entire sales cannot be added as income of the assessee but addition can be made only to the extent of estimated profits embedded in the sales and that the income from suppressed sales should be determined by assessing the gross profit of the assessee.

4. Nikhil Garg Vs ITO, ITA No : 180/JPI2018:

In case of unaccounted sales or purchases only percentage of profit involved in sales or purchases should be taken for the purposes of additions to the income of such person, and not the whole amount of sales or purchases should be added to the income while computing profits.

5. Nawal Kishore Soni Vs ACIT, ITA No. 1256, 1257, & 1258/JPI2019

The gold purchased in period of demonetization was towards agreed sale to persons on receiving amount therefor from those persons in cash. Source of payment for purchase of gold is out of amount received from its sales. 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.

6. DCIT Vs. Brijvasi Developers P. Ltd. ITA No. 290/Ahd/2013

It is a well-established law that the entire undisclosed sales could not be added as income of the assessee but the addition could be made only to the extent of estimated profits embedded in such unaccounted sales.

7.3.6 Further, claim of appellant that in similar cases i.e retail traders whose ledger accounts containing unaccounted sale transactions,

unaccounted gold and cash payments by retailers were found in J pack software, department has taxed only gross profit on unaccounted sales is examined and found that in following cases where their respective ledger accounts containing gold purchases from M/s MJP Land payment of consideration in cash and Gold are found in J pack software, the AO has taxed only Gross profit on unaccounted sales of Unaccounted purchases from M/s MJPL. Gross profit taken is gross profit admitted by those retailers in previous years.

1. Balagopalan Jewellery Mart (PAN AAJFS7538N) : In this case, Account of assessee firm Was found to be maintained in J Pack software under the name Bal Gopal MD'. Modus operandi similar to that of appellant were followed of unaccounted cash, Gold payment wrt Unaccounted purchase of gold from M/s MJPL. But the AO has assessed only Gross profit on unaccounted purchase of gold and others from M/s MJPL by adopting GP rate admitted by assessee in the return filed for the year holding that unaccounted items purchased would have been sold during the year.

2. Mohammad Najeef: In this case, Account of assessee was found to be maintained in J Pack software under the name Safina Tenkhasi. Modus operandi similar to that of appellant were followed of unaccounted cash, Gold payment wrt Unaccounted purchase of gold from M/s MJPL. But the AO has assessed only Gross profit on unaccounted purchase of gold and others from M/s MJPL by adopting GP rate admitted by assessee in the return filed for the year holding that unaccounted items purchased would have been sold during the year.

3. Similarly it is noticed that in following cases of retail traders whose ledger accounts containing unaccounted purchase of gold from M/s MJPL and payment of consideration in unaccounted cash and gold were found in J Pack Software, the AO has assessed only Gross profit on unaccounted purchase of gold and others from M/s MJPL by adopting GP rate admitted by them in the return filed for the year holding that unaccounted items purchased would have been sold during the year. 1. VR Narayanan (PAN AACPNO873G) 2. AmarJewellery Mart (PAN AAAFA1372P) 3. R M Jewellery (PAN AASFR3177R) 4. Rajans Rathna Jewellery Pvt Ltd., (PAN AADCR2271C) 5. STS Jewellery (PAN AADFS5955L) 6. R N Appav Chettiar Jewellery Pvt Ltd (PAN AADCR621 1 R) 6. LKS Gold House P Ltd., (PAN AAACL7611F) 7. Fathima Jewellers (PAN AAFF1047L).

7.3.7 Therefore, in view of law laid down by various courts in cases cited above, it is held that unaccounted payment in cash can't be taxed separately for failure to explain source for two reasons 1. Unaccounted sale of gold purchased from M/s MJPL in previous years would have constituted source for such unaccounted payments in cash and gold -during the year 2. Unaccounted payment of cash constitutes unaccounted expenditure incurred in connection with unaccounted sales of jewellery purchased from M/s MJPL. The only profit that appellant earns in this entire unaccounted purchase and sale transaction is Gross profit on unaccounted sale of such Unaccounted purchases made from M/s MJPL. That's why it appears that AO has charged only gross profit on unaccounted sale of unaccounted purchases made from M/s MJPL in case of other retailers mentioned above. Therefore, I am of considered view that only Gross profit on unaccounted sale of unaccounted purchases is taxable. The AO may adopt Average annual value of RBI rate/ gm of 22 carat gold to arrive at value of unaccounted sales to the quantum of purchases. Consequently, additions made by AO on account of 'Unexplained cash' u/s 69A Rs 10,17,517/-is held to be not sustainable.

7.3.8 During appeal proceedings, the appellant has filed copies of trading and profit loss of appellant for the year. It is noticed that appellant itself has declared Gross profit of 8.49% on gold sales which is certified by chartered accountant. The AO is directed to adopt the gross profit percentage admitted by the appellant to arrive at unaccounted business income from Unaccounted sale of Unaccounted purchases from M/s MJPL for the Year. The AO may verify above accounts to arrive at correct number of Unaccounted purchases after excluding purchases already disclosed in the books.

The Revenue is not in appeal against the order of CIT(A) deleting the addition of unexplained cash added by AO u/s.69A of the Act, amounting to Rs.10,17,517/-.

4.1 The CIT(A) enhanced the assessment by disallowing cash payment made to the extent of Rs.10,17,517/- by invoking the

provisions of section 40A(3) of the Act. The CIT(A) directed the AO to disallow cash payment of Rs.10,17,517/- u/s.40A(3) of the Act by observing in paras 7.3.9 & 7.3.10 as under:-

7.3.9 IT is undisputed that cash payment to the extent of Rs 10,17,517/- has been made for purchase of Gold from M/s MJPL. As per provisions of section 40A (3) of IT Act if any assessee incurs any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft exceeds 10,000/-, no deduction can be allowed in respect of such expenditure. It is also not disputed that both the concerns have bank accounts. It could be seen from table reproduced above that in each instance payment in cash by appellant was in excess of Rs10,000/. Question is will the provisions of section 40A(3) for disallowance of cash expenditure apply to transactions outside the books. Hon'ble High court of AndhraPradesh in the S. Venkata Subba Rao (173 ITR 340) had held that once it is conceded that the profits and gains derived from the illegal business are liable to be taxed, then all the provisions of the IT Act must apply. It is not possible to hold that some of the provisions such as Section 40A(3) do not apply to the assessment of taxable income in the case of illegal business while some others do. It is not possible to draw a distinction between several provisions of the Act, one set applying to the assessment of income arising from illegal business and the other set not applying thereto. Maybe, in an illegal business such as smuggling, it may not be practicable to comply with the requirements of Section 40A(3). Similar view has been held by Hon'ble Gujarath High court in case of CIT Vs Hynuop food & oil India(p) Ltd 290 ITR 702. Therefore, I am of considered view that cash payments made by appellant to the extent of Rs 10,17,517/- attracts provisions of section 40A (3)warranting disallowance of entire amount. The AO is directed to disallow cash payment made during the year of Rs 10,17,517/- u/s 40A (3) of IT Act.

7.3.10 Therefore, addition made on account of Unaccounted sales' Rs 16,32,616/-is to be restricted to the extent of Gross Profit on unaccounted sales of unaccounted purchases from M/s MJPL. Gross profit to be adopted is gross profit admitted by appellant on gold sales in the return originally filed by it for the year. The AO is directed to disallow cash payment of Rs 10,17,517/- u/s 40A (3). Consequently, Grounds of appeal of appellant are Partly Allowed.

Aggrieved against the directions of CIT(A) to the AO for assessment of gross profit on unaccounted sales of unaccounted purchases and enhancement on account of disallowance of cash payment u/s.40A(3) of the Act, the assessee came in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee argued that the profit estimation of gross profit directed by CIT(A) is not correct and actually net profit is to be estimated on the unaccounted sales. Even before us, the assessee has not contested that rather admitted that these amounts recorded in 'Amanulla KDR', one ledger found in the J-Pack of computer of MJPL, wherein the unaccounted cash is recorded. The assessee has not disputed the unaccounted sales of unaccounted purchases from MJPL by assessee, but only requested that net profit should be estimated and not the gross profit. The Ld.counsel for the assessee now before us filed the GP/NP ratio of the assessee from assessment years 2016-17 to 2021-22. The assessee filed the following chart:-

<i>Details</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>	<i>2019-20</i>	<i>2020-21</i>	<i>2021-22</i>
<i>Gross Profit %</i>	<i>8.49%</i>	<i>14.04%</i>	<i>8.20%</i>	<i>6.17%</i>	<i>8.52%</i>	<i>8.05%</i>
<i>Net Profit %</i>	<i>0.34%</i>	<i>1.64%</i>	<i>1.15%</i>	<i>0.67%</i>	<i>0.90%</i>	<i>1.10%</i>
<i>Net Profit % (specific to</i>						

<i>transactions with Mohanlal Jewellers (MJPL)</i>	–	0.42%	0.69%	0.90%	0.96%	0.81%	0.72%
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The Id.counsel for the assessee urged for a fair estimation of net profit on the sale recorded during financial years 2015-16 to 2020-21 relevant to assessment years 2016-17 to 2021-22 for an amount of Rs.108 Crores but only the unrecorded not thr recorded or accounted for and for this particular year, the amount is Rs.16,32,616/-. The Id.counsel for the assessee stated that the gross profit directed by CIT(A) to the assessee to be assessed at 8.49% is much higher and that also specific to the transactions entered with MJPL only and that also unaccounted transactions.

6. On the other hand, the Id.CIT-DR supported the order of CIT(A) and stated that the CIT(A) has rightly directed the AO to sustain the addition of unaccounted sales of Rs.16,32,616/- to the extent of gross profit on these unaccounted sales of unaccounted purchases from MJPL.

7. As regards to the issue of disallowance of cash payment u/s.40A(3) of the Act, the Id.counsel for the assessee stated that once the profit is estimated on unaccounted sales, the consequent cash payment cannot be disallowed by invoking the provisions of

section 40A(3) of the Act. For this, he relied on the decision of Hon'ble Madras High Court in the case of K.R. Ganesh Kumar vs. ACIT in Tax Case Appeal No.2408 of 2006. The Id.counsel for the assessee also relied on the decision of Hon'ble Allahabad High Court in the case of CIT vs. Banwari Lal Banshidhar, (1998) 229 ITR 229 (All), Hon'ble Punjab High Court in the case of CIT vs. Smt. Santosh Jain, (2008) 296 ITR 324 (Punjab), Hon'ble Rajasthan High Court in the case of Principal CIT vs. Jadau Jewelers & Manufacturers (P.) Ltd., (2018) 409 ITR 85 (Raj) and Gujarat High Court in the case of CIT vs. Ankleshwar Taluka ONGC Land Loser Travellers Co-operative Society, (2014) 362 ITR 92 (Guj) for this proposition and Co-ordinate Bench decision in the case of M.Shyamalanathan & Co., in ITA Nos.117 to 122/CHNY/2023, order dated 16.06.2023.

7.1 The Id.Counsel argued that when the income of the assessee is computed applying flat profit rate and when no deduction is allowed in regard to purchases of the assessee, there is no need to invoke the provisions of section 40A(3) of the Act. The Id.counsel argued that in the present case before us admittedly the assessee has made accounted purchases and unaccounted purchases both, accounted purchases are already disclosed on which profit is declared and those are payments through RTGS or through banking

channel. Wherever unaccounted purchases and sale made to MJPL, for which no deduction is claimed by assessee and only net profit is applied, no disallowance u/s.40A(3) of the Act can be made. He stated that Revenue also admits that these purchases and consequent sale both are in cash and it is not accounted and no deduction has been claimed on this. He stated that when profit rate is applied, that will take care of everything and there is no need for AO to make scrutiny of the amount incurred on the purchases by the assessee. He relied on the above mentioned proposition for this issue.

8. On the other hand, the Id.CIT-DR stated that the CIT(A) has rightly directed the AO that the addition made on account of unaccounted sales is to be retrospective to the extent of gross profit on unaccounted sales made out of unaccounted purchases from MJPL and gross profit is to be adopted as admitted by assessee on gross sales in the return originally filed by it in the year under consideration and subsequent years.

9. We have heard rival contentions on both the issues, which are intertwined. We noted that the CIT(A) has also restricted addition to the extent of gross profit on unaccounted sales arising

out of unaccounted purchases made from MJPL and gross profit is to be adopted is gross profit as admitted by assessee on gold sales made in the return originally filed by it for the relevant assessment years. We noted from the above chart reproduced at para 5 above, wherein the gross profit declared varies from 8.49% to 14.04% and net profit ranges from 0.34% to 1.15%. We have observed from the findings of the AO and that of the CIT(A) and noted that there are three types of transactions recorded in seized document 'Amanullah KDR' ledger account found in J-Pack software found in the premises of MJPL during search. In these accounts, there are three types of transactions i.e., transactions in regular course recorded in the regular books of accounts as payment made through banking channel i.e., RTGS, etc., second transaction is exchange of old gold and third cash purchases on which the CIT(A) has directed gross profit on unaccounted sales on unaccounted purchases made through MJPL. We are of the view that a reasonable profit rate should be estimated and if the gross profit rate is to be added that can be added at the rate of 2%, going by the nature of business of the assessee and similar line of business only on the unaccounted part or payment made in cash for which cash was utilized for making purchases and consequent sale of MJPL. Hence, we are of the view that a reasonable estimate of gross profit of 2% will meet the ends

of justice for both sides i.e., for the Department as well as for the assessee for all these six assessment years for unaccounted purchases only of gold from MJPL not recorded in the regular books of accounts. Hence, we direct the AO to apply gross profit rate of 2% on cash payment made for unaccounted purchases of gold from MJPL for these relevant six assessment years and not on recorded purchases. The assessee will file complete detail of purchases made in cash payment and purchases made through banking channel i.e., RTGS etc., before the AO and the AO will accordingly apply profit rate only on unaccounted purchases made through cash payments of gold through MJPL as recorded in the seized document 'Amanullah KDR' i.e., ledger account find in J-Pack software. Hence, in view of the above direction for computation of income, the matter is restored back to the file of the AO for applying profit rate of 2% only on unaccounted cash payments made to MJPL.

10. As regards to intervening issue of applicability of provisions of section 40A(3) of the Act and disallowance made by CIT(A) by enhancing the assessment on cash payments, since we have adjudicated the issue of profit rate on unaccounted purchases and consequent sale, the provisions of section 40A(3) of the Act did not apply, where estimation of gross profit is made by rejecting the

books of accounts. This view has been held by various High Courts and particularly the Hon'ble Rajasthan High Court in the case of Jadau Jewellers and Manufacturers (P) Ltd., *supra*, wherein the Hon'ble High Court has considered this issue as under:-

3The counsel for the appellant has taken us through the order of the Assessing Officer as well as the Commissioner of Income-tax (Appeals)and contended that the view taken by the Assessing Officer is required to be restored.

3.1 The first issue is now covered by the decision of this court and the Tribunal has followed the same.

3.2 In that view of the matter, the Tribunal has not committed any error in deciding question No. 1.

3.3 Regarding question No. 2, the issue is covered by the decision of the Punjab and Haryana High Court in CIT v. Smt. Santosh Jain (2008] 296ITR 324 (P&H) wherein it has been held as under (page 325) :

“We are of the view that when income of the assessee was computed by applying a gross profit rate, there was no need to look into the provisions of section 40A(3) of the Act, as applying the gross profit rate takes care of the expenditure otherwise than by way of crossed cheque also. We are in agreement with the view taken by the Allahabad High Court in Banwari Lal Banshidhars case [1998] 229 ITR 229 (All) to the following effect (page 232) :

The question for consideration is when no deduction was sought and allowed under section 40A(3), was there any need to go into section 40A(3) and rule 6DD(). We see force in the view taken by the Appellate Tribunal that when the income of the assessee was computed applying the gross profit rate and when no deduction was allowed in regard to the purchases of the assessee, there was no need to look into the provisions of section 40A(3) and rule 6DD(j). No disallowance could have been made in view of the provisions of section 40A(3), read with rule 6DD(j) as no deduction was allowed to and claimed by the assessee in respect of the purchases. When the gross profit rate is applied, that would take care of everything and

there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee'."

3.4 Similar view was taken by the same High Court in CIT v. GobindRam [2015] 229 Taxman 491 (P&H).

10.1 There is a consistent view of High Courts that when an income of the assessee is computed applying flat gross profit rate and when no deduction is allowed in regard to purchases of the assessee, there is no need to invoke the provisions of section 40A(3) of the Act. Similar view is held by the Hon'ble Madras High Court in the case of K.R. Ganesh Kumar, *supra*, wherein the question of law admitted by the Hon'ble High Court was as under:-

"Whether the Tribunal is correct in confirming the order(s) of the Lower Authorities in invoking Section 40A(3) of the Act to make the disallowance which resulted in assessment of 'undisclosed income' in spite of the purchases were assessed on an estimated basis in the said block assessment order?"

and the Hon'ble High Court answered this question as under:-

"7. We are called upon to decide whether the invocation of the provisions of s.40A(3) in the aforesaid facts and circumstances of the present case is justified in law. There is no dispute that the provisions of s.40A(3) apply to block assessments in general. The provision however, would apply only where expenditure in question has been incurred and claimed in the computation of income. The Supreme Court, in the case of Attar Singh Gurmukh Singh Vs. Income Tax Officer, Ludhiana (191 ITR 667), reiterates this position as well. In the present case, the Tribunal confirms as a finding of fact at para 17 of its order that no expenditure has been incurred except the investment in gold. The consideration paid towards the investment has been duly brought to tax as unexplained income, such income not having been claimed as expenditure in the computation of income. The objection of the Revenue is that the valuation of the gold per gram is not Rs.500 but

more as revealed by other disallowances made in the order of assessment and if the higher rate was taken into consideration, one could assume that certain expenditure has been incurred and claimed. We are not persuaded to accept this submission in so far as there is no necessity to consider any other valuation except that relating to the subject disallowance, being Rs.500 per gram adopted by the Assessing officer after due consideration and application of mind. We are thus of the view that the provisions of 40 A(3) are wholly inapplicable to the facts and circumstances of this case. The substantial question of law is answered in favour of the assessee and against the Revenue. No costs.”

10.2 In view of the above facts and circumstances, we direct the AO to delete this disallowance as in this case, the income of the assessee is assessed applying flat gross profit rate and assessee has not claimed any deduction with regard to the purchases made by him, hence the provisions of section 40A(3) of the Act cannot be invoked. We reverse the findings of the CIT(A) on this issue and accordingly, this issue of assessee's appeal on enhancement is allowed. Accordingly, interconnected issue with regard to applicability of section 40A(3) of the Act, is decided in favour of the assessee and as regards to application of profit rate, we direct the AO to apply gross profit rate of 2% in all the six assessment years.

10.3 Since the facts and circumstances and the issue are exactly identical in assessment years 2017-18 to 2021-22, taking a consistent view, we reverse the findings of CIT(A) in invoking the

provisions of section 40A(3) of the Act in favour of assessee and also direct the AO to apply gross profit rate of 2% in all these six years.

11. The one more common issue in all these six appeals of assessee is as regards to the assumption of jurisdiction by the AO for framing assessment u/s.153A of the Act when there was no material found during the course of search on the appellant rather incriminating material relating to this assessee was seized from the search conducted on some other person and hence, assessment should have been framed u/s.153C of the Act. For this, assessee has raised the following grounds:-

Order u/s 153A Bad in Law – Order should have been Passed u/s 153C

ii. *The Learned AO/CIT(A) ought to have noted that there was no material found during the search of the Appellant.*

iii. *The Learned AO/CIT(A) failed to note that an order u/s 153A can be passed only when reliance is placed on material found in course of search of Assessee.*

iv. *The Learned AO/CIT(A) erred in passing order u/s 153A when in the Appellant's case the search of Appellant yielded nothing and only was based on materials found in the search of another person.*

Incriminating Materials Seized Belong to a Different Assessment Year:

v. *The Learned AO/CIT(A) erred in holding that incriminating materials relating to this assessment year were seized in the case of the assessee and thereby confirmed the assessment order, even though it pertained to a totally different AY.*

vi. *The Learned AO/CIT(A) ought to have seen that the electronic evidences seized from the mobile phone of the accountant of the partner of the assessee were not relating to this year and is inadmissible in law.*

11.1 During the course of hearing, the Id.counsel for the assessee has not made any argument on this issue and hence, it seems that the assessee is not interested in prosecuting this issue and hence, this common issue in all these six assessment years is dismissed.

12. The next issue raised by assessee in ITA No.1051/CHNY/2024 for the assessment year 2021-22, is as regards to the order of CIT(A) confirming the action of AO in making addition of excess stock jewellery incorrectly added when there was no excess stock. For this, assessee has raised the following ground Nos.13 to 15:-

Excess Stock Jewellery Incorrectly Added when No Excess Stock:

xiii. The Learned AO/CIT(A) erred in adding excess stock found when compared with book stock at the time of search, without properly verifying the invoices which were pending for entry.

xiv. The Learned AO/CIT(A) ought to have noted that there is no proper justification or explanation provided for the addition of the same in the books of account.

xv. Without prejudice to the above, the Learned AO has not properly quantified the addition and has already included the same in the earlier additions and this would tantamount to double addition and ought to be quashed.

13. Brief facts are that during the search at the premises of the assessee, gold stock weighing 41007.66 grams including gold ornaments and gold bars have been found. The AO on verification of stock register, gold ornaments weighing 31830.510 grams and old gold weighing 3206 grams have been found mentioned in the stock

register. When confronted on this aspect, the Managing Partner Shri Amanullah accepted that there is excess stock of 5971.150 grams available with the assessee and he offered the same to tax in the hands of the assessee firm. But subsequently during levying of prohibitory order proceedings stated that the assessee has received supply of stock from MJPL vide invoices as under:-

1. GJ/1446/20-21 dated 24.11.2020 for 2631.57 gms.
2. GJ/1913/20-21 dated 02.01.2021 for 2645.50 gms.
3. GJ/2860/20-21 dated 01.03.2021 for 2046.88 gms.

The assessee firm further stated that the stock register is updated and after recording the same, it is noticed that the stock matches. The assessee further submitted that the profit for financial year 2020-21 relevant to assessment year 2021-22 includes stock of 5971.150 grams. Since the assessee admitted this as income, the AO added the excess stock and accordingly addition of Rs.2,89,18,518/- was made. Aggrieved, assessee preferred appeal before CIT(A).

13.1 The CIT(A) also confirmed the action of the AO but the CIT(A) has not given any finding regarding this addition of unexplained investment on account of excess stock although, there is discussion of excess stock found but there is no finding in the CIT(A)'s order and for this, the Id.counsel for the assessee now requested that

matter can be restored back to the file of the AO, who will examine the vouchers i.e., invoices of MJPL and then will decide the issue afresh. To this, the Id.CIT-DR has not raised serious objection.

14. After hearing both the sides on this issue and going through the facts of the case, we note that the assessee has specifically filed invoices and tried to correlate the excess gold stock and if these invoices are correct then it seems that there is no excess stock but these things need verification at the level of AO. Hence, we set aside the order of AO and CIT(A) on this issue and remand this issue back to the file of the AO for fresh adjudication. In term of the above, this issue of the assessee is allowed for statistical purposes.

15. In the result, the appeals filed by the assessee are partly-allowed for statistical purposes as indicated against each of the issues.

Order pronounced in the open court on 6th November, 2024 at Chennai.

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 6th November, 2024

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.