NEUTRAL CITATION
2026:GUJHC:68713-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 125 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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Approved for Reporting	Yes	No
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PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), AHMEDABAD
Versus
M/S. ZINZUWADIA AND SONS

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Appearance:
MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1
MR B S SOPARKAR(6851) for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 22/10/2026

JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard Learned Senior Standing Counsel Mr.Varun K Patel for the appellant and learned advocate Mr.B.S. Soparkar for the respondent.

2. This appeal is filed under Section 260A of the Income-tax Act, 1961 (for short, "the Act") by the appellant-revenue proposing the following substantial questions of law arising out

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of the impugned order dated 10th May, 2024 passed by the Income Tax Appellate Tribunal (for short, "the Tribunal") in ITA No. 50/AHD/2021 for AY 2017-18;

> *" (a) Whether on the facts and in the circumstances of the case and in law, the learned ITAT has erred in confirming the decision of CIT(A), of allowing relief of Rs.6,92,85,082/ out of addition of Rs.7,88,85,082/- and reducing the addition to Rs.96,00,000/- made by the Assessing Officer u/s. 68 of the Income Tax Act, 1961 on account of bogus sales made in the wake of demonetization, without appreciating the evidence including forensic evidences brought on record by the Assessing Officer and in doing so, the learned ITAT has ignored the law of human probability as laid down by Hon'ble Supreme Court of India in the case of Sumati Dayal vs. CIT, Bangalore (1995) AIR 2109, and also CIT, West Bengal vs. Durga Prasad More 82 ITR 540 SC?*
>
> *(b) Whether on the facts and in the circumstances of the case and in law, the learned ITAT has erred in confirming the decision of CIT(A) reducing the addition made by the Assessing Officer u/s. 68 of the Income Tax Act, 1961 on account of bogus sales made in the wake of demonetization from Rs.7,88,85,082/-to Rs.96,00,000/- by allowing relief of Rs.6,92,85,082/- to the assessee?*
>
> *(c) Whether on the facts and in the circumstances of the case and in law, the learned ITAT has erred in*

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confirming the decision of CIT(A) of restricting the addition to Rs.95,41,057/- as against Rs.1,14,24,765/- made by the Assessing Officer for unexplained investment in stock, without appreciating the evidences Including forensic evidence brought on record by the Assessing Officer and also overlooking a material fact that the finding was admitted by the partner of the firm in his statement recorded during the course of survey proceeding, particularly when the assessee has informed that they accept the difference of stock and the tax liability arising upon such stock will be paid by them?

(d) Whether on the facts and in the circumstances of the case and in law, the learned ITAT has erred in confirming the decision of CIT(A) of deleting the addition of Rs.13,33,961/ on account of excess cash, without appreciating the evidences including forensic evidences brought on record by the Assessing Officer and overlooking a material fact that excess cash was admitted by the partner of the firm in his statement recorded during the course of survey proceeding?"

3. The brief facts of the case are as under;

3.1. The assessee is a jeweller, a partnership firm dealing in gold and silver bullion and jewellry.

3.2. After demonetization on 08.11.2016 subsequent information came into the possession of the Department that

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certain persons had adopted unscrupulous means to introduce their unaccounted income in cash in the banks during the demonetization period and on the basis of such information, a search at the residence of the partner of the assessee firm was carried out on 24.01.2017. Simultaneously, a survey was carried out at the business premises of the assessee.

3.3. During the course of survey, a digital device was found in the premises which was impounded, and thereafter data was extracted. As per the forensic report, it was concluded that sales for the period prior and during the demonetization period had been recorded through backdating so as to justify the cash deposited during the demonetization period, i.e. from 08.11.2016 to 31.12.2016, in illegal tender notes. The quantum of such alleged backdated sales was noted to be Rs.7,88,85,082/-.

4. Accordingly, during the assessment proceedings, the Assessing Officer, considering the return filed by the assessee on 31.10.2017 for Rs.26,39,110/-, and after considering the replies to the queries raised by the Assessing Officer, concluded that all the alleged backdated sales were bogus by noting the following facts in the assessment order;

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" 1) That on 8.11.2016, the assessee had made sales of Rs.3.5 crores mostly in demonetized notes, serving 223 customers in the process from 8:00pm to 12 midnight. This quantum of sales made in a single day was noted to be 40 to 50 times higher than the daily average. It was noted that it was virtually impossible to serve 223 customers in a short span of 240 minutes from 8:00pm to 12 midnight and further CCTV footage of the said day, as evidence of the sales so made to so-many customers, was not produced by the assessee;

That imaging of the digital data impounded during survey was carried out, its forensic analysis done and as per the forensic report, it was found that the sales entries made between 8.11.2016 and 22.1.2017 were back-dated to present that they pertained to earlier period. The total value of the such sales was of Rs.7,88,85,082/-;

(ii) Cash sales during the de-monetization period in the month of October and November showed abnormally high increase - percentage wise when compared with that in the same period in the preceding year, showing an increase of 1673.10% in the month of October, and 1128.66% in the month of November, 2016, as compared to the sales made in the month of October and November, in the immediately preceding year i.e. 2015."

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5. The Assessing Officer therefore passed an assessment order under Section 143(3) read with Section 153A on 31.12.2018 by assessing the total income at Rs.9,42,82,954/-, including the additions of Rs.7,88,85,082/- under Section 68 as bogus sales through backdating entries, based mainly on a forensic report on the ORAV/FX Pro data, and on the ground that on one single day, i.e. on 08.11.2016, it was impossible to make the sales to 223 customers within a period of four hours, and it was a pre-demonetization sales spike. The addition also included Rs.1,27,58,762/- under Section 69B, which included Rs.1,14,24,765/- towards stock and Rs.13,33,961/- towards cash, based on a statement of the partner during the course of survey.

6. Being aggrieved, the assessee preferred an appeal before the CIT(Appeals), who deleted the entire addition of Rs.7,88,85,082/- and reduced the stock addition to Rs.95,41,057/-.

7. Being aggrieved, both the assessee and the revenue preferred cross-appeals before the Tribunal. The Tribunal, by the impugned order, dismissed both the appeals.

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8. Being aggrieved, the revenue has preferred this appeal arising out of the order of the Tribunal in revenue's appeal.

9. The Tribunal, after considering the submissions made by both the sides, as well as the facts and circumstances leading to the additions made on account of a bogus sales and the reasons assigned by the CIT(Appeals) to delete such additions, concluded that no case was made out by the revenue for holding the sales made by the assessee during the demonetization period of Rs.7.88 Crore as bogus sales. The Tribunal assigned the reasons as under;

> *" 11. At the cost of repetition, it is stated that the case of the Revenue is that the assessee being a jeweler, had indulged in bogus billing of sales and thus generated cash in its books so as to justify cash deposited in its bank accounts during the de-monetization period; that in truth or in reality, this cash was not generated out of the actual sales done by the assessee, but was its unaccounted income, which was introduced in its books as bogus sales, and unaccounted income available with it in cash which the assessee had allegedly routed back in its books as bogus cash sales.*
>
> *12. We are of the view that on first principles itself, this*

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addition is not justified. As stated above, the case of the Revenue is that the assessee had routed back its unaccounted income by way of bogus sales. The fact of the matter is, even this bogus sales has been reflected by the assessee in its books of accounts as income. Whether this is sales or whether it is unaccounted income of the assessee, both are entitled to the same treatment of being subjected to tax, which the assessee has already done by treating it as cash sales. So nullifying the cash sales, treating it as bogus sales, and then subjecting it to tax, is in effect a sum-zero exercise.

13. Without prejudice to the above, the basis for treating the cash sales of Rs.7,88,85,082/- as bogus is, we find, based merely on circumstantial evidence. The case of the Revenue in treating this sales as bogus is, as noted at para 10.2 to 10.5 of his order, on the basis of :

• improbability of the assessee having made sales of Rs.3.5 crores in one day i.e. on 8.11.2016 which was 40-50 times the daily average, catering in all 223 customers in 240 minutes with no evidence of the aforesaid facts being demonstrated through CCTV footage of the said date.(page 11 and para 10.2 page 46)

> *"10.2 Further on observation of the forensic report it is noticed that the assessee has shown exorbitant rise in cash sales post-demonetization. On 8/11/2016 when demonetization was declared at 08:00 pm, they have shown to make sales to 223 customers*

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within 4 hours i.e. One sales per 1.07 minutes within which the entire sales cycle mentioned as under right from the decision of customer to purchase product, generation of bills and receipt of cash is not possible to be handled by 2 accountants deputed during that period. Further 223 customers can not be served in such short time is established as the retail sale process involves the following steps:

(i) According to retail sale process, a retail purchaser who is willing to purchase bullion / jewellery shall first enter shop.

(ii) After that he will inquire about gold/silver rate and / or specific design he is looking for and then finalize the rate.

(iii) After finalizing rate, he will look multiple pieces for making informed decision with the assistance the employee (s). (iv) Then retail customer will select the piece.

(v) There is no MRP printed in jewelery items (as it is in day to day items) and fixing of price takes time where relevant calculations are done by the concerned employee. The employee will weigh and then determine price as per rates.

(vi) After final weighing, quantity and rate will be communicated and negotiations are made. Subsequently the price is finalized.

(vii) Then the cash memo of retail sale will be generated from computer and print out of the same shall be taken.

(viii) Then after print of cash memo one copy will be handed over to customer and in one copy the customer signs acknowledging the delivery.

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(ix) Thereafter customer shall make the payment which shall be verified and counted by the seller. The entire process shall take at least minimum of about 15 to 20 minutes. It is impossible to serve 223 customers from 8 pm to 12 midnight on the 8th November, 2016."

• drastic increase in the quantum of cash sales reflected by the assessee in the month of October-November2016, 1673% and 1128%, as compared to the sales made in the preceding year in the same two months and as compared also to sales made in the preceding month of the impugned year, i.e. 871% increase in the month of October 2016 and 72% increase in the month of November 2016.(para 10.3 page 47-48)

"10.3 The past profile of the assessee analysed on the issue of sales and amount deposited in bank account which is reproduced as under:- period:

Month	*Amount*	*Month*	*Amount*
Nov'26	*45,12,000*	*Nov'16*	*705,00,000*
Dec'15	*68,95,000*	*Dec'16*	*2,00,000*

Percentage rise in cash sales (%)

Month	***2015–2016***	***2016–2017***	
	(Cash)	***(Cash)***	***Percentage Rise in Cash Sales (%)***
April	*19,38,114*	*8,58,515*	*-55.70*
May	*17,11,231*	*8,55,860*	*-49.99*
June	*25,67,400*	*4,80,250*	*-81.29*

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July	*24,94,875*	*36,75,799*	*47.33*
August	*33,26,281*	*32,97,467*	*-0.87*
September	*21,95,722*	*36,88,615*	*67.99*
October	*20,20,595*	*3,58,27,263*	*1673.10*
November	*50,29,122*	*6,17,90,604*	*1128.66*
December	*68,90,317*	*11,30,919*	*-83.59*
January	*86,27,922*	*23,10,527*	*-73.22*
February	*9,91,105*	*12,24,549*	*23.55*
March	*0*	*1,43,50,263*	*N.A.*

- *It is evident that the cash sales made in the demonetization period has increased drastically when compared with the similar period in preceding month. The same is detailed below:*

Month	***2016–2017***	
	(Cash)	***Percentage Rise in Cash Sales (%) (Base Considered as Preceding Month)***
July	*36,75,799*	
August	*32,97,467*	*-10.29*
September	*36,88,615*	*11.86*
October	*3,58,27,263*	*871.29*
November	*6,17,90,604*	*72.47*
December	*11,30,919*	*-98.17*
January	*23,10,527*	*104.31*
February	*12,24,549*	*-47.00*

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March	*1,43,50,263*	*1071.88*

Identity of parties who made these purchases not revealed since the bills contained only their names (para 10.4 page 48)

> *"10.4 The facts and circumstances leads to the conclusion that the assessee has not done actual sales on and before 8/11 / 2016 as claimed but has manipulated the opportunity and generated sales bills of cash sales to accommodate OHD Currency which were not recorded in regular books of However, majority of sales invoices generated on and after 8/11 / 2016 contains only name of the purchaser. Further the parties to whom additional sales were disclosed without have their identity, creditworthiness and genuineness of transaction. The facts and circumstances leads to the conclusion that the assessee has not done actual sales on 8/11 / 2016 as claimed but has manipulated the opportunity and generated sales bills of cash sales to accommodate OHD Currency.*

forensic report and digital data showing that backdated sales was recorded between 08/11/2016 and 22/11/2017 totalling in all Rs.7,88,85,082/-(page 13-32 and para 10.5 page 48 of AO's order),

> *"10.5 In addition to that forensic report of impounded digital data reveals that some entries made were of a previous invoice date but with*

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actual time stamping of a later date. So, appearing at trailing record numbers / position in database. Further the data was entered in a FoxBASE Database using the Application named Ornet. The Ornet Database file was found in Party AS-11 Zinzuwadia Showroom satellite/Zinzuwadia servers_Shwrm/ junjunwadian sons hdd 2/img.junjunwadian sons hdd 2.EO1/Vol_vol4/ORN2008/DATA/ZINZUWAD/16-17/f older. The foxBase data of different segments like Sales, Vouchers and Others was exported in excels. As per forensic experts after analysis of these data, suspicious entries were found which are out of order and are not in correct sequence. As per standard, in FoxPro Database, the entries are appended sequentially as a record number which is automatically system generated based on actual timestamping. Meaning that, whenever any entries are made from front end screen of the application to the database, such entry is always added the end (bottom) of the existing data in the database file. However, it was found that in this database, some entries (Highlighted in yellow) made were of a previous date but with actual timestamping of a later date. So, appearing at higher record numbers in a database. Such lots or groups / bunches of entries are repeated continuously until 22/1/17 Therefore, it is concluded that all these entries as shown below, have been made between 8/11/16 and 22/1/17 but through backdating attempt has been made to present that these pertain to earlier period. The total value of such non-sequential entries for Sales is Rs.7,88,85,082/-.

In view of the above, a sum of Rs. 7,88,85,082/- is

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added to the total income of the assessee as bogus sales through backdating entries in (OHD).”

14. Therefore, evidently, the entire case of the Revenue rests on surrounding facts and circumstances, while the facts on record in relation to these sales have remained undisturbed and accepted. If sales is bogus, it is reflected in some way in the books also with no corresponding purchases booked or bogus purchases booked to substantiate the bogus sales. If corresponding purchases are not booked it impacts stock position either by way of negative stock appearing in the books stock record and/or physical stock not tallying with the book stock position. This is elementary and logical. And it is based on this actual data that the finding of bogus sales should have arrived. The factum of bogus sales could have been established as a matter of fact by finding bogus purchases also made by the assessee and /or excess stock being found physically to the same extent with the assessee.

15. On the contrary, we find, there is no anomaly noted on the above counts by the AO. He has not found any bogus purchases recorded by the assessee to justify bogus sales. The AO in fact has accepted all purchases made by the assessee. There is no finding of any anomaly in the stock position also. No negative stock is found disclosed in the records of the assessee. More pertinently even survey action conducted by the Department did not reveal any excess stock with the assessee commensurate with bogus sales alleged to have been made by the

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assessee. While the allegation of bogus sales levelled in the assessee is to the tune of Rs.7.88 Crs all allegedly made during the demonetization period from 08-11-2016 to 31-12-2016, the survey conducted on the assessee immediately thereafter on 24-01-2017, which ought to have revealed excess stock to the said extent of bogus sales, revealed only excess stock of Rs.1.14 Crs, restricted to Rs.95 lakhs by the ld. CIT(A).

16. All books of accounts including stock records, purchase and sales register, ledger journal and cash and bank book were maintained by the assessee which finds mention by the tax auditor in his report in Form 3CD submitted along with the return of income and placed before us at P.B 55-73. The complete quantitative tally of principal items traded in by the assessee, giving opening stock, purchases, sales and closing stock of each item was disclosed in the Tax audit Report, which we have noted at page 65 of the paper book. Daily stock statement of items traded in, for the period 01-04-16 to 24-01-17 was filed to the AO placed before us at P.B 187-188. Counter wise item report of all items traded across the counter during this period was also filed to the AO, placed at P.B 189-194. Even before us Trading Stock ledgers of all items traded in were filed when the Ld. Counsel for the assessee was specifically asked to do so at bar. 17. Despite all records placed before the AO no bogus purchases were found to have been made by the assessee. No negative stock was reported either by the tax auditor, nor found by the AO, nor pointed out to us by the Ld.

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DR from the stock ledgers submitted during the course of hearing before us and no corresponding excess stock was found during survey conducted on the assessee by the department."

10. The Tribunal thereafter referred to the order passed by the CIT(Appeals) at paragraphs 6.20 and 6.21, wherein the CIT(Appeals) has noted that the fact of no excess stock being found with the assessee during the survey in consonance with the bogus sales alleged to have been made by the assessee, and the purchase and availability of the stock not having been disputed, the sales could not be held to be bogus sales. Paragraphs 6.20 and 6.21 of the CIT(Appeals) reads as under;

" 6.20 It is pertinent to note that during the course of assessment proceedings, appellant has provided relevant books of account including cash book, sales register, purchase register, stock register etc and AO has not proved that appellant was not having adequate stock for making sales. Once AO has not disturbed purchase nor doubted availability of stock, sales already recorded in books of account cannot be held to be bogus sales. Further, the value of excess stock found in possession of appellant, i.e. physical stock over the accounted stock, as on the date of search and survey i.e.24.01.2017 was as per the valuation done by department itself as can be seen from page no. 52 of the Order of the AO and such excess stock has already been treated by the AO as

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investment not fully disclosed for the purpose of Section 69B of the Income Tax Act and added to the total income of appellant. Therefore, where during the course of search and survey, which took place after such a short period of 2.5 months of the demonization period having started and within 24 days of the said period having ended, the excess stock was found in possession of appellant as against the alleged bogus sale of Rs.7,88,85,082/- and where the said amount of excess stock has already been treated as not fully disclosed investment u / s 69B of the Act and added to the total income of appellant, no incriminating material can be said to have been found and brought on record to support the claim of such bogus sale of

6.21 Therefore, in absence of any doubt raised on the genuineness of purchases, adequacy of stock and reduction of stock in accounts corresponding to the alleged bogus sale and in absence of any incriminating material found in possession of appellant during the course of search and survey action either in form of stock or any other asset confirming the bogus sale of such a huge amount of Rs. 7, 88,85,082/-, it shall be unfair and unjustified to uphold the contention of the AO that the appellant has generated cash bills to accommodate the OHD currency. Therefore, the addition made based on such contention in absence of any incriminating material is not tenable in eyes of law."

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11. The Tribunal also considered paragraph 6.11 of the CIT(Appeals), wherein the contention of the Assessing Officer that it was not possible to make sales to 223 customers in a short span of 240 minutes on 08.11.2016. Paragraph 6.11 of the CIT(Appeals) reads as under;

> *" 6.11 On perusal of assessment order, it is observed that AO has proceeded to make addition of treating accounted sales in books of account as bogus sales through backdating on assumption that it was not possible to make such sale of huge jewellery post announcement of demonetization. In the present case, sales on 08/11/2016 was claimed to have been made for Rs 3.58 crore out of aggregate addition of Rs 7.88 crore. The following is the. few video and news items available in public domain justifying that post declaration of demonetization till the midnight of 8th November, 2016, there were huge rush of people to buy the jewellery all over the India.*

Sr.No.	*Headline of News/video*	*Link of Youtube Video*
1	*People rush to goldsmiths in Jalandhar to convert black currency into gold at midnight!*	*https://www.voutube.com/watch?v=mep1rEP1rENTuKiW*
2	*People rush to buy gold jewellry after 500 & 1000 notes banned*	*https://www.youtube.com/watch?v= bLfxEyWXVU*
3	*People take 'note' of 'change', rush to ATMs " and jewellery shops_Daijiworld Television*	*https://www.voutube.com/watch?v=A 97EQ8RQ-Y0*

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The AO has observed that it was impossible to cater such huge customers in very short time, appellant has provided its modus operandi of doing sales on a particular day, how accounting was made etc., The reasons provided by appellant from the perspective of a prudent and pragmatic businessman as well as based on the advanced billing technology adopted by appellant, that due to unprecedented rush of customers post-demonetization the appellant realized a huge business opportunity and decided to keep showroom open till 12 o'clock of the night on 8th November 2016. The appellant realized that it would not be possible to cater such huge crowd of customers if the option of selection of ornaments of their choice is provided and such option of selection could also increase the risk of theft/ defalcation of Gold Ornaments from showroom and therefore the appellant decided not to give option of selection of jewellery but to give readily prepared packet of Gold Ornaments only; that the administrative staff and family members were instructed to keep aside all other work and to prepare such small package of gold ornaments, two persons were exclusively allotted the work of preparing and handling the bills to the customers through the computerized billing process, due to barcode labels on each and every jewellery/ornaments of showroom with all the requisite details of Jewellery for preparing bills mere scanning the barcode through barcode reader would fetch all the details of the jewellery on the ORNET Software for billing purpose and there is no need to enter the details of the jewellery and therefore billing process

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was quick and easy. The circumstantial evidences as referred supra and billing processes adopted to cater huge rush, AO's contention that it was not possible to make sale to 223 customers cannot be accepted."

12. The Tribunal thereafter concurred with the findings of fact of the CIT(Appeals) in paragraph 21, which reads as under;

" 21. As is evident from a bare perusal of the above he found the assessee's explanation plausible of having managed its affairs in such a manner so as to grab the opportunity of huge rush of public to jewellers on account of demonetization announced by the Government which was acknowledged by reports in the public domain. No infirmity in the explanation of the assessee has been pointed out to us during the course of hearing, neither do we find any in the same. Therefore we find no infirmity in the order of the Ld. CIT(A) accepting the assesses explanation with regard to allegedly unusually large number of customers catered to by the assessee on one single day."

13. With regard to the ground of the Assessing Officer that sales made in the months of demonetization being abnormally unusually high as compared to that in the corresponding months of the preceding year or preceding months of the same year, the Tribunal referred to paragraph 6.18 of the

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CIT(Appeals) and concurred with it. Paragraph 6.18 of the CIT(Appeals)'s order reads as under;

> *" 6.18 So far as comparison of sales made by AO in current year as well as preceding year including month to month comparison, The contention of the AO is not found tenable for the fact that comparability of previous year's data of appellant's business with the current year's data is not possible as the full- fledged retail business of the appellant was started from July, 2016 only. The said fact has not been denied by AO as well. Such retail sale business usually takes a period of 2 to 3 months for the sales to pick up. Further, as has already been held earlier, because of such unprecedented and unpredicted move of the government declaring demonetization of OHD (Old High Denomination) notes of Rs.500 and Rs. 1,000, the lack of immediate clarity with regard to the said scheme and the rife of rumors all over social and other medias, a large section of people all around the nation, in the fear of losing the value of money held by them in form of cash, rushed to the ornament showrooms for purchasing the gold ornaments / bullion so as to maintain the value of their cash in form of investment in gold. This peculiar aspect of the F.Y. 2016-17 makes the cash sales data of the demonetization period i.e. 08- 11-2016 to 31.12.2016 incomparable to the said data of corresponding period of F.Y.2015-16 along with the fact that the retail sales was started by the appellant only from July 2016. The said historic and peculiar aspects of F.Y.2016-17 do not make the increase in cash sales during the demonization period, in any manner,*

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implausible and beyond belief. Furthermore, on perusal of the comparative data of Month of March for F.Y. 2016-17 and F.Y. 2015-16 as provided in the show cause notice dated 11.10.2018 as well as the Assessment Order, it is deduced that during the Month of March 2016 there was not a single amount of cash sales made by the appellant whereas in the Month of March 2017, the cash sales was Rs.1,43,50,263/-. Further, the hike in cash sales for the March'17 when compared to the preceding Month of February'17 was 1074.88%. However, no explanation was required by the AO with regard to the hike in the Month of March'17 in the show cause notice whereas the highest hike is witnessed in the said month of March'17 only based on both yearly and monthly comparison. This, calling a spade a spade, shows the selective approach that has been adopted in course of the assessment. Addition made based on such selective approach, if sustained, would be unjust, unfair and infirm in the eyes of law and therefore, such ground of addition is not found lawful and hence is not tenable."

14. Referring to the above, the Tribunal held that the anomaly as noted by the learned CIT(Appeals) could be adequately explained by the usual rush of public to buy jewellry during demonetization, which was acknowledged by the reports in public domain. The Tribunal therefore noted that no infirmity in the same nor the DR was able to point out why the explanation of the assessee was unacceptable.

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15. Regarding the allegation of backdating of the entries of sales resorted by the assessee, which was based on the forensic report of the digital data found during the survey, the Tribunal referred to paragraphs 6.22 to 6.27 of the CIT(Appeals), which reads as under;

> *" 6.22 So far as allegation of back dating entries in ORNET Software and reliance placed on forensic report, AO has mainly contended that as per the standard, in FoxPro Database using the application named ORNET, the entries are appended sequentially as a record number which is automatically system generated based on actual time stamping and therefore, whenever any entries are made from front end screen of the application to the database, such entry is always added to the end (bottom) of the existing data in the database file. However, as further stated by the AO, the forensic report of the impounded data revealed that some entries of cash sales made were of a previous invoice and previous date but with actual time stamping of a later date. Such entries were considered as suspicious and not in correct sequence. AO further stated that such entries are repeated in the database till 22/01/2017 and therefore, he went on to make addition of such suspicions entries appearing in the Ornet Software from 08.11.2016 to 22.01.2017 the aggregate amount of which came to Rs. 7,88,85,082/-.*
>
> *6.23 The AO had, with the same contention on the basis*

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of which the impugned addition has been made, issued the show cause notice on 11.10.2018 against which appellant has filed its written submission dated 17/12/2018 as reproduced herein above. The appellant in reply to same had submitted that it is not only when the new i.e. fresh entry is made from front end screen of the application to the database that the addition to the end (bottom) of the existing data in the database file takes place and new transaction ID is generated but it is also when any old voucher is opened and "save" or "Print" button is clicked, under modification mode in order to give appropriate effects, ORNET, the software used by appellant for accounting purpose, adds new records in the same database which in turn creates new transaction ID in the table by deleting the old records. Further, in case if voucher is reopened and "print" button is pressed for the purpose of reprinting, the effect of "save" button will be generated, causing generation of a new record number and thus, its sequencing will also get changed as explained above. From this, the appellant made it clear that sequencing of sales entry changes as and when any sales entry is either printed/Viewed or opened/closed after recording it in the ORNET database/software.

In nutshell, it has been contended by the appellant that after the last made entry in the ORNET, the next entry/record can take place not only by making a new / fresh entry but the same can also take place by reopening and then saving or printing the already made i.e.old entry as well. This results in the change of

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sequence of entries and the old entry that has been reopened and saved later on is then viewed below the new/fresh entries that were made in the software actually after such old entry was reopened and resaved/printed.

6.24 The appellant has also provided an example in the Para 2.3(b) of the reply submitted to AO on 17.12.2018 so as to bring understating about the said situation. It has been demonstrated to the AO in the assessment proceedings that in first situation, the Voucher Number S/1 is recorded on date 1/5 / 2018 S/2 on 2/5/2018 S/3 also on 2/2/2018 S/4 on 3/5/2018 and S/5 on 5/5/2018 in that sequence. Thereafter, when in the second situation, the Voucher number S / 2 was reopened and then saved a new sequence was generated whereby Voucher number S / 2 which was reopened and saved got placed below Voucher Number S/5 with no change arriving in their date of record. Further, all the above contentions of appellant have been supported by the letter dated 14.12.2018 of D'soft Infotech Pvt Ltd i.e Developer of ORNET software/database wherein the above mentioned functionality of the Database/software is confirmed by the Developer.

On understanding of the above facts and technical aspects of ORNET software, I am satisfied with the contentions provided by the appellant especially where no specific contradiction to the contentions of appellant has been made in the forensic report. The peculiar and exceptional

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aspects of the software have not been commented upon by the forensic audit team and only general aspects of the functionality of the software have been dealt with by them. Further, the software developer itself has provided the functionality details of the software which clearly corresponds with the contentions of appellant. The AO has neither considered the contentions of the appellant nor the letter/report submitted by the software developer at the time of passing order. It is observed on perusal of the AO's order that the submission of appellant dated 17.12.2018 has been reproduced by the AO in the said order, but no reason whatsoever has been provided as to why such explanations and contentions of appellant were not acceptable especially in view of the fact that the same was confirmed by the software developer itself. No reason was provided in the order as to why the functionality details of the software as provided by the software developer itself in letter dated 14.12.2018 confirming the contentions of appellant were not acceptable. If there was any doubt about the authenticity of the letter of software developer in the mind of AO or if there was any confusion with regard to any aspect of the same, the AO could, in the interest of justice, have asked the software developer to provide further details and explanations through the power conferred upon u/s 133(6) of the Act as the letter of developer dated 14.12.2018 had all necessary contact details and address of the developer for the said purpose. By providing the letter of software developer confirming the contention and view of appellant, the appellant had duly discharged the onus of proof cast upon it. The AO on the other

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hand failed to bring on record any proof or material that would have effect of outweighing and rebutting the contentions of appellant duly supported by the letter of software developer. Therefore AO did not discharge the onus of proof. Therefore, the addition made by the AO without discharging the onus of proof cast upon it cannot be said to have given effect to the correct position of law and hence is unjust and unfair.

6.25 Further, the act of AO of not providing any explanation and reason for not accepting the contentions of appellant which was backed by logical and technical reasoning as well as necessary evidence in form of confirmation of expert i.e. software developer cannot be said to be in line with the principle of natural justice. The Hon'ble High Court of Punjab and Haryana in the case of Anupam Kapoor 299 ITR 0179has held as under:

"....There was no material before the AO, which could have lead to a conclusion that the transaction was simplicitier a device to camouflage activities, to defraud the Revenue. No such presumption could be drawn by the AO merely on surmises and conjectures. In the absence of any cogent material in this regard, having been placed on record, the AO could not have reopened the assessment.

It is settled law that suspicion, howsoever strong cannot take the place of legal proof."

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In the ITAT Delhi bench 'C' Pavitra Realcon (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-32, New Delhi [2017] 87 taxmann.com 142 (Delhi Trib.) it has been held that even if how strong is the presumption/assumption, it could not be basis for any addition.

6.26 Further, I find the explanations and contentions of appellant satisfactory for the reasons given in Para herein above and for the fact that the said logical and technical explanations are also supported by the software developer itself and also that no specific contradiction with regard to the same is found in the forensic report as has been stated earlier. Further, I also find favour with the contention of appellant that in the case of periodic review of the books of accounts and compliance purposes, many entries need to be reopened for checking purpose as well as the adjustment /pending/rectification entries need also be passed, that such act of reopening and saving old entries and passing the pending/rectification entries in its original date in the software cannot be taken to consider such entries as non genuine and that such non-sequential entries appear throughout the year and not only during demonetization period.

Having regard to the above discussed facts and in absence of any incriminating material found during the

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course of search and survey action and any dispute with regard to the adequacy of stock as discussed in Para herein above, the addition is not sustainable on this ground.

6.27 It is observed that in present case, while passing the assessment order, AO has not doubted purchases recorded in books of account or closing stock shown at year end and only treated accounted sales as bogus sales and liable for tax u/s 115BBE. However, this contention cannot be accepted for the reasons that once sales are recorded in books of accounts and corresponding purchases are not in doubt, it cannot be subject matter of addition u/s 68 r.w.s 115BBE of the Act.

Hon'ble Ahmedabad ITAT in case of Vishal Export in ITA No. 1684/Ahd/2004 dated 07.08.2009 held as under:

"The assessee had made export of goods to M/s Arina worth of Rs.70,00,000/- in the A.Y.1998-99. The AO having only such information that the assessee had also made so called bogus export to M/s Arina, he alleged that the assessee is also involved in such kind of bogus export of goods by over invoicing and receiving money from Russia on large scale. The assessee submitted that the AO has just made an assumption that the assessee has also made bogus export to Russia merely on the basis of information that some parties are involved to make bogus export to M/s Arina, Moscow, however as a matter

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of facts the name of the assessee is not found in the proceedings carried out by the DRI, New Delhi. For other years similar allegations were made for some other genuine parties. The AO on such basis made addition of Rs.70,00,000/-, Rs.64,00,000/-, Rs., 1,06,00,000/- Rs.72,00,000/- in the A.Ys. 1998-99, 1999-00, 2000-01 and 2001-02 respectively after holding that the bogus export proceeds are nothing but the receiving back of money of the assessee's own money initially sent abroad through hawala. The assessee submitted before us that it had shown Rs.70,00,000/-, Rs.64,00,000/-, Rs., 1,06,00,000/- and Rs. 72,00,000/- for the A.Y.1998-99, A.Y. 1999-00, A.Y. 2000-01 and A.Y.2001-02 respectively in the Profit & loss account as sales which has been offered for taxation. The assessee also submitted that the AO has even accepted such turnover for working out deduction u/s 80HHC of the Act. The assessee further submitted that when it had already offered sales realization of Rs.70,00,000/-, Rs.64,00,000/-, Rs., 1,06,00,000/- and Rs.72,00,000/- for the A.Y. 1998-99, A.Y. 1999-00, A.Y. 2000-01 and A.Y.2001-02 respectively as sales and such income is accepted by the AO to be the income of the assessee for respective years, addition of the same amount once again u/s 68 of the Act would tantamount to double taxation of the same income. Having regard to the facts of the case, it was argued that addition in these assessment years is based on some information gathered in some other party's case and without concrete evidences concerning the assessee. In any case, this amounts to double taxation of the same income, when the assessee has already offered the same

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income in the Profit & Loss account as sales.

5. After hearing the rival contentions and going through the facts of the case, it is a fact that the AO has accepted such turnover for working out deduction u/s.80HHC of the Act. We find that when the assessee has already offered sales realization as sales and such income is accepted by the AO to be the income of the assessee for respective years, addition of the same amount once again u/s.68 of the Act would tantamount to double taxation of the same income. Accordingly, we upheld the order of CIT(A) on this common issue. This common issue of the Revenue's appeals is dismissed."

The Hon'ble Gujarat High Court in above case in Tax Appeal No 2471 of 2009 dated 03.07.2012 has held as under:

"6. Having heard learned counsel for the parties and having perused the documents on record, we are in agreement with the above view of the Tribunal. According to the Assessing Officer, Rs.70 lakhs represented bogus sales and therefore the eligibility of the assessee's deduction under section 80HHC of the Act came to be reduced by such amount. Having done so, the Assessing Officer further proceeded to add the same amount under section 68 of the Act.

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7. In view of the above situation, we do not find any reason to interfere with the Tribunal's order. Before closing, however, one issue needs clarification. As noted earlier, C.I.T. (Appeals) had allowed the appeal of the assessee in toto. He, in fact, reversed the Assessing Officer's finding that the sale was bogus and that no export was made. On this basis, he not only deleted addition under section 68 of the Act, but also directed that the assessee shall be entitled to deduction under section 80HHC of the Act for such disputed amount also. This aspect of the matter was not decided by the Tribunal though both sides presented their rival contentions. In fact the Tribunal's finding that Assessing Officer's order would amount to double taxation proceeds on the basis that such amount of Rs.70 lakhs is deleted while working out section 80HHC benefits. If C.I.T. (Appeals)'s conclusion that the amount in question represented genuine exports sale was sustained, there was no question of double taxation. Ordinarily, therefore, we would have been inclined to remand the proceedings before the Tribunal for a finding on this issue. However, learned counsel for the assessee clarified that the assessee does not claim any deduction under section 80HHC of the Act to the extent of such disputed amount of Rs.70 lakhs. In other words, he agreed that the Assessing Officer's working out of the deductions under section 80HHC of the Act on the export sale of the assessee of Rs.585.21 crores against the original claim of the assessee of such deduction of Rs.585.91 crores is correct. He submitted that, in fact, in the present case, such diminution of the assessee's eligibility for deduction under section 80HHC of

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the Act would have no bearing on the assessee's ultimate tax liability. With respect to this last submission, we express no opinion. However, in view of a clear stand taken before us and the statement made, we are not required to remand the proceedings before the Tribunal to the above limited extent also."

16. Considering the above findings of fact recorded by the CIT(Appeals), the Tribunal observed as under;

" 25. The assessee's explanation with regard to the allegation of backdating of entry was that the date noted in the transaction was the date when the transaction was last opened either for recording/ editing or any such purpose. Therefore date recorded of transaction in the digital data did not necessarily represent the date of recording the transaction but represented the date when the transaction was last viewed. And on the basis of this date no inference of backdating of transaction could therefore be arrived at. This fact was demonstrated also by the assessee to the AO during assessment proceedings. The Ld. DR was unable to point out any infirmity in the assessee's explanation. We therefore do not find any infirmity in the order of the Ld. CIT(A) accepting assesses explanation with regard to the allegation of the AO of backdating entries of sales.

26. In view of the above we do not find any infirmity in the order of the ld. CIT(A) finding merit in the explanation given by the assessee of the anomalies and

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discrepancies noted vis-à-vis sales made of Rs.7,88,85,082/- prior and during de-monetization, and we completely agree with the ld. CIT(A) that the purchases and stock available with the assessee having not been disputed by the AO, the question of bogus sales being made therefore, does not arise. As also the fact that no actual excess stock was found by the Department during survey conducted on the assessee post-demonetization commensurate to the bogus sales alleged to have been made by the assessee. We have no hesitation therefore in confirming the order of the ld.CIT(A) deleting the entire sales of Rs.7,88,85,082/- on account of bogus sales."

17. With regard to the challenge made by the revenue to the order of CIT(Appeals) restricting the addition made by the Assessing Officer on account of excess stock found during the survey and deleting entirely the addition made on account of excess cash found during the survey, the Tribunal has recorded the fact that on survey conducted on the business premises of the assessee on 24.01.2017, physical stock taking of various items traded in by the assessee was done and compared with the stock as per books, which revealed various anomalies, which was confronted to the partner, Shri Kishor Soni, of the assessee. Considering the statement of the partner of the assessee firm, excess stock and unaccounted sales, addition of Rs.1,14,24,765/- was made by the Assessing Officer.

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18. The CIT(Appeals), during the course of the hearing, found that on account of unaccounted sale of 18CT gold diamond jewellry weighing 1063.05 grams noted from the storage of physical stock on the first floor of the business premises of the assessee, the Assessing Officer noted shortage of such stock by 1063.05 grams, whereas registered valuer during the survey noted the excess stock of 1510.210 grams of 18CT gold diamond jewellry from the first floor. The CIT(Appeals) therefore, considering both the data, held that there was actually excess stock of such jewellry to the extent of difference between that noted by the Assessing Officer and registered valuer of 447.157 grams. Accordingly, when the Assessing Officer made an addition of Rs.23,34,464/- on account of unaccounted sale of such jewellry, the CIT(Appeals) held that addition to be made on account of unaccounted investment in excess stock to the tune of Rs.9,81,957/- being the difference of the excess stock found by the AO and as per the registered valuer. The CIT(Appeals) also noted that addition made by the Assessing Officer of Rs.1.14 Crore including on account of unaccounted sale to the tune of Rs.53,12,201/-, which could be attributed to unaccounted investment made in excess stock by the assessee, further reduced the addition made

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by the Assessing Officer to the said extent. Relevant finding of the CIT(Appeals) as per paragraphs 8.4. to 8.8 reads as under;

> *" 8.4 On the basis of statement of partner recorded during the course of survey as referred above, the Assessing Officer has made impugned addition, and has worked out unaccounted sale of 18CT diamond jewellery (as per Sr.No.iv in above para) as under:*

Particulars	*Qty in Gms*
Unaccounted sale of jewellery found from first floor (6310.210 being stock as per books-5299.03 being physical stock)	*1011.207*
Unaccounted sale of 14 CT found from first floor being stock as per books as no physical stock was found	*51.846*
Total	*1063.053*

> *It is seen that the Assessing Officer has made addition on two grounds i.e. in respect of excess physical stock found in respect of certain items of jewellery and other one on account of unaccounted sale of certain other type of jewellery. The addition on account of discrepancy in stock as per above extract of statement of a partner aggregating to Rs 1,14,24,765 has been worked out as per the difference between the physical stock found on the ground and first floor of the showroom and stock as per books on the date of survey.*

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8.5 Further the appellant has contended that 18 Ct. Gold jewellery of 1510.210 grams as physically found by the IT department appointed registered valuer Shri Kamlesh S Nahar on the first floor of the showroom on the date of survey has not been considered - by the Assessing Officer while counting physical stock at the time of making addition of the excess stock on this count. In support the appellant enclosed extract of the Valuation report of registered valuer namely Shri S Nahar which is reproduced herein under -

DDIT : MR. CHANDRA PRAKASH MEENA Date : 25/01/2017

UNIT : 2 (3), Ahmedabad

The following Jewellery & Gold etc. Articles are belonging to M/s. Zinzuwadia & Sons

Address : Venus Amadeus, Jodhpur Cross Road, Satellite, Ahmedabad

The same has been examined by me to the best of my knowledge. I assess the respective value, Description No. of Pieces weight & net total weight of each article as mentioned in the FORM-08 under section 34-AB of Wealth Tax Act, 1957 Purpose for which Valuation is made.

Sr. No.	Particular	Gross Wt. Grms.	Net Wt. Grms.	Dia. Cts.	Gold Avg. rate per 10 Grms.	Dia. Avg. per ct.	Value (Rs.)
	SUMMARY						
1	Gold Jewellery (91.6%)	32,655.630	32,655.630		26,820		875,82,400

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	(ground floor)						
2	*Gold Jewellery (75%) (ground floor)*	*1,421.170*	*1,421.170*		*21,960*		*31,20,889*
3	*Gold Bar (ground floor)*	*2,270.100*	*2,270.100*		*29,460*		*66,87,715*
4	*Gold Jewellery (75%) (1st floor)*	*1,963.230*	*1,510.210*		*21,960*		*33,16,421*
5	*Diamond Jewellery (75%) (1st floor)*		*5,299.003*	*674.68*	*21,960*	*48,500*	*447,39,320*
6	*Diamond Jewellery (91.6%) (1st floor)*		*902.926*	*114.68*	*26,820*	*49,500*	*80,98,300*
	TOTAL		***44,059.039***	***789.36***			
7	*Silver (ground floor)*	*59.4 Kg*	*59.4 Kg*				*24,56,130*
	(Total Valuation of Rs. Fifteen Crore, Sixty Lac, One Thousand, One Hundred, Seventy Four Only)						***1560,01,174***

It is observed that while computing unaccounted sales referred supra and as mentioned in statement recorded during the course of survey, Assessing Officer has considered physical stock of 5299.03 Gms in respect of 18 CT gold ornaments. Further on perusal of physical stock

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inventory prepared by registered valuer as on the date of survey, there was stock of 1510.210 Gms of 18 CT gold jewellery in addition to 5299.03 Gms but Authorised officer at the time of survey has not considered such physical stock of 1510.210 Gms. while arriving at the figure of shortage of stock and consequently working of the unaccounted income and therefore, the same is required to be taken into account for adjudicating this ground of appeal of the appellant. This contention of the appellant is found correct factually and legally also in view of the decision of Hon'ble Agra ITAT in the case of ACIT Vs Maya Trading Co 34 Taxman.com 144 wherein it was held that "Where assessee was able to show that admission made during survey by surrendering income on excess stock was incorrect, on basis of seized material itself, addition was unjustified". Hon'ble Delhi High court in the case of CIT VsDhingra Metal Works 196 taxman 488 has held as under:

> *"Section 133A of the Income-tax Act, 1961 - Survey - Assessment year 2005-06- Whether though an admission made during survey is extremely important piece of evidence, it cannot be said to be conclusive and it is open to person, who has made admission, to show that it is incorrect - Held, yes - During survey operation at business premises of assessee-firm, revenue noticed some discrepancies in stock - As partner of assessee was not able to explain difference in stock at that time, he offered certain income for assessment - Subsequently,*

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assessee submitted that said statement about stock was incorrect, and that impugned discrepancy had been reconciled - Consequently, assessee withdrew offer of additional income for assessment - Assessing Officer did not accept assessee's plea and assessed income as per statement given by partner - Whether as assessee had been able to explain discrepancy in stock found during course of survey, Assessing Officer could not have made said addition solely on basis of statement made by partner on behalf of assessee - Held, yes

8.6 To make it clarify further considering the above working, it is once again noted that the Assessing Officer has assessed unaccounted sale of 1063.053 Grams in respect of the 18 Ct. Gold Jewellery meaning thereby the accounted stock of 18 Ct. Gold Jewellery in the books of the appellant on the date of survey was found more than that of physically found stock by 1063.053 Grams. However, as discussed above, the of the appellant of 1510.210 grams of 18 Ct. Gold Jewellery found on the first floor not considered and included in the physical stock found (although evident from the valuer's report reproduced above) by the Assessing Officer being found acceptable ipso facto results into excess stock (i.e. physical stock over book stock) of the 18 Ct. Gold Jewellery by 447.157 grams. [1510.210 grams of stock not considered in physical count (-) 1063.053 grams found short] as on the date of survey. Accordingly, the value of such excess stock of 447.157 gms of 18 CT gold

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*jewellery comes to Rs. 9,81,956/- (447.157 Grams *21960 per 10 grams as on the date of survey). The same is unaccounted investment in the said jewellery.*

8.7 Having regard to the above discussion and after taking effect of 1510.210 grams of physical stock of 18 ct Gold Diamond jewellery not considered in the physical count, the addition to be made in respect of excess stock/unaccounted sale is re-worked out as under:

Sr. No.	***Particulars***	***Weight***	***Rate per 10 grams***	***Amount (Rs.)***
(i)	*Excess Stock 22 ct. gold as per Para 11.3 of the Order of the Assessing Officer*	*3105.833*	*26820*	*8329844*
(ii)	*Excess Stock of Silver as per Para 11.3 of the Order of the Assessing Officer*	*788.68*		*32611*
(iii)	*Excess Stock of 24 Ct. bullion as per Para 11.3 of the Order of the Assessing Officer*	*66.75*	*29,460*	*196645*
(iv)	*Excess Stock of 18ct gold diamond jew. as discussed herein above \ [(-) 1063.053 + 1510.210\]*	*447.157*	*21,960*	*9,81,957*
(v)	*Unaccounted sale of 22 ct. Diamond jew. as per Para 11.3 of the Order of the Assessing Officer*	*78.524*	*26,820*	*210601*
(vi)	*Unaccounted sale of Diamond as per Para*	*66.12*	*48,500*	*320600*

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	11.3 of the Order of the Assessing Officer			
	Total undisclosed income in stock			***1,00,72,258***

It is pertinent to note that in the case of appellant, as per the reworking made above there is excess stock as per Sr.No.i to iv of the table above as well as shortage of stock as per the Sr.No.v & vi of the above table. Accordingly the excess stock is re-worked out on the basis of above working at Rs.95,41,057(83,29,844+32,611+ 1,96,645+,9,81,957) and shortage of the stock being unaccounted sale reworked out to Rs 5,31,201(2,10,601+3,20,600).

8.8 In this regard the appellant has submitted that the unaccounted sale proceeds of Rs.5,31,201/- as noted above could be considered as invested in the excess stock found of the gold ornaments at Sr.No.i to iv of the above table. In other words, no double addition to the extent of Rs.5,31,201/- on account of unaccounted sale proceeds could be made, over and above to the unaccounted investment of Rs.95,41,057/- being excess stock of the items at Sr.No.i to iv of the table above. The submission of the appellant is found acceptable factully as well on law as there could not be the double addition of the unaccounted sale proceeds. Thus, working of excess stock found during the course of survey proceedings in case of appellant in the above mentioned table amounts to Rs 95,41,057/- in place of Rs.1,14,24,765/-."

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19. The Tribunal, after considering the above findings, concurred with the addition sustained by the CIT(Appeals) of Rs.95,41,057/- and deletion of addition of the cash found during the course of survey, by observing as under;

> *" 30. Before us the Ld. DR was unable to controvert the factual finding of the Ld. CIT(A) resulting in restricting the addition made by the AO on account of excess stock of Rs.1,14,24,765/- to Rs.95,41,057/-. He was unable to controvert the fact noted by the Ld. CIT(A) that the registered valuer had found excess physical stock of 18Ct. gold jewellery from first floor of the business premises of the assessee of 1510.210 gms which the AO had noted to be short by 1011.207gms. In the light of the same we do not find any infirmity in the order of the Ld.CIT(A) adjusting the data of stock of gold jewellery found from first floor premises of the assessee to this extent resulting in addition being restricted only to the resultant excess jewellery found of 447 147 gms. Also we do not find any infirmity in the Ld.CIT(A)'s order telescoping the addition made of investments in excess stock against the addition of unaccounted sales found to have been made by the assessee.*
>
> *In the result, we hold that the Ld.CIT(A) has rightly restricted the addition on account of excess stock found during survey to Rs.95,41,057/-*
>
> *31. As for the issue of addition made account of cash*

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found during survey, the facts are that while the books showed cash balance of Rs.15,96,561/- the physical cash found during survey was Rs. 2,62,600/-.

32. The assessee explained the same as attributable to cash purchases made out of the Books of the assessee and cash withdrawals, both of which were duly accounted for post survey and the cash purchases disallowed u/s 40A(3) of the Act by the assessee in the return of income filed. The AO was not convinced with the same but the Ld. CIT(A) found merit in the contention of the assessee and deleted the addition made. The explanation of the assessee is reproduced at page 59 of the AO's order as under:

> *"3.1 With regard to the cash difference of Rs. 13,33,961/- found at the time of survey, we wish to state that physical cash found at the time of survey was Rs.2,62,600/- whereas cash as per books of accounts was Rs. 15,96,561/- as is evident on page no.18 of the statement of Mr Kishore K Soni. Further, out of the said cash difference of Rs.13,33,961/-, amount of Rs.5,93,082/- pertains to unaccounted cash purchase which is duly recorded in books of accounts post survey and disallowed u/s 40A(3) of the IT Act in the return of Income of AY 2017-18. With respect to remaining cash difference of Rs.7,40,879/- we wish to state that the said difference is due to unaccounted cash withdrawals made by the partners which is duly recorded in the books of accounts by the firm post survey. To*

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substantiate abovementioned fact, we are attaching herewith copy of capital account of partners and copy of relevant pages of the cash book highlighting the entries of withdrawal by the partners and entries of payment made towards purchase vide Annexure- 5. Hence, we submit that the difference of cash has been duly considered in the books of accounts and thereby the said difference in cash stands explained and accordingly, your good self is requested not to make addition on this count.

3.2 Without prejudice to above, we wish to state that cash as per booksof accounts exceeds physical cash and it is not the case where physical cash exceeds cash as per books of accounts. Accordingly, it is not the case of unaccounted cash and thus no addition should be made in the hand of the assessee firm on account of difference of cash."

20. Learned Senior Standing Counsel, Mr. Varun K. Patel for the appellant, submitted that both the CIT(Appeals) and the Tribunal have committed a grave error in ignoring the findings recorded by the Assessing Officer by deleting the addition of Rs.7,88,85,082/- and reducing the addition to Rs.96 lakhs made by the Assessing Officer under Section 68 of the Act, as well as restricting the addition to Rs.95,41,057/- as against Rs.1,14,24,765/- made by the Assessing Officer for unexplained

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investment in stock and deletion of addition of Rs.13,33,961/- on account of excess cash, without appreciating the evidence, including the forensic evidence brought on record by the Assessing Officer, and overlooking the material fact that excess stock and cash were admitted by the partners of the firm in the statement recorded during the course of survey proceedings.

20.1. It was further submitted that on account of demonetization, the *modus operandi* adopted by the assessee was to introduce the cash by showing bogus sales on 08.11.2016, which is proved by the forensic evidence brought on record by the Assessing Officer, and both the CIT(Appeals) and the Tribunal ignored the impossibility of catering to 223 customers within 240 minutes on 08.11.2016. In support of his submission, reliance was placed on the decision of the ***Hon'ble Himachal Pradesh High Court in the case of J.M.J Essential Oil Company v. Commissioner of Income Tax, Shimla, reported in [2019] 415 ITR 17.*** Reference was also made to the reconciliation of the difference of book stock and physical stock, as per statement recorded during the survey, and difference of book stock and physical stock as considered in the return of income submitted by the assessee, to point out

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that such reconciliation is not based upon any reliable materials, in as much as the Assessing Officer has given the cogent reasons for making addition of Rs.1.14 Crore for the excess stock found during the course of survey.

20.2. It was submitted that the CIT(Appeals) has compared the excess stock found during the course of survey with that of the registered valuer, and thereby, without any basis, reduced the same by adjusting the stock found during the course of survey and as per the valuation report. It was submitted that the Tribunal, without assigning any reasons, has upheld the order of the CIT(Appeals) by reproducing the same, ignoring the findings of the Assessing Officer which goes to the root of the matter for making addition of Rs.1.14 Crore towards excess stock found during the course of survey.

20.3. Learned Senior Standing Counsel Mr. Patel invited the attention of the Court to the detailed findings of the Assessing Officer based upon the statement of the partner of the assessee firm recorded during the course of survey as well as the reply tendered by the assessee to point out that the Assessing Officer found the reply as a vague and general reply, without proving any nexus with difference of physical stock and as per books

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of account found during the course of survey was reconciled, as the difference was already admitted and accepted by the partner of the assessee firm in the statement recorded during the course of survey. It was, therefore, submitted that both the CIT(Appeals) and the Tribunal had committed an error and ought to have confirmed the order passed by the Assessing Officer for excess stock and cash found during the course of survey.

20.4. It was further submitted that neither the CIT(Appeals) nor the Tribunal have discussed the forensic report on record, which clearly shows that the sales made by the assessee firm during the demonetization period was recorded as a backdated sales, and without showing as to how the forensic report is not reliable, both the CIT(Appeals) and the Tribunal have relied upon the possibility of making sales to 223 customers within 240 minutes on 08.11.2016 and thereafter depositing the demonetized currency up to 31.12.2016 by the assessee firm as a genuine sales, on the ground that there was stock available with the assessee and therefore, the sales cannot be considered as a bogus sales, ignoring the fact that the assessee has adjusted the stock resulting into excess stock during the course of survey conducted on 24th January 2017. It was therefore

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submitted by learned Senior Standing Counsel Mr. Patel that that the orders passed by the CIT(Appeals) and the Tribunal are perverse orders, and appeal requires consideration

20.5. It was also submitted by learned Senior Standing Counsel Mr. Patel that the SLP arising out of the order of the Hon'ble Himachal Pradesh High Court in the case of ***JMJ Essential Oil Company is also dismissed as reported in [2020] 113 taxmann.com 463 (SC).***

20.6. It was therefore submitted that, as held by the Himachal Pradesh High Court, the Assessing Officer was justified in considering the bogus sales as income of the assessee under Section 68 as well as excess stock and cash found during the course of survey under Section 69B of the Act, because the assessee has failed to discharge the burden cast upon it to show that such bogus sales as per the forensic report was genuine sales, and did not refer to stock on the date of demonization on 08.11.2026 as well as as the assessee has failed to reconcile the stock on the date of demonetization with the sales effected during the window of four hours on 08.11.2016. It was therefore submitted that CIT(Appeals) and the Tribunal have ignored this vital aspect by dismissing the

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appeal of the revenue, and hence the same requires further scrutiny by this Court on the questions of law proposed by the revenue.

21. Per contra, learned advocate Mr. B.S. Soparkar for the respondent-assessee, appearing on caveat, submitted that there are concurrent findings of fact recorded by both the CIT(Appeals) and the Tribunal and no incriminating material was found during the course of survey at the business premises of the assessee or during the search proceedings at the residential premises of the partner of the assessee firm so as to justify the allegation of bogus sales of Rs.7.88 Crore.

21.1. It was submitted that the CIT(Appeals) and the Tribunal have recorded the findings after perusing the stock register placed on record by the assessee firm, including the reconciliation statement of the stock for the sales made after announcement of the demonetization on 08.11.2016. It was also pointed out that the CIT(Appeals) and the Tribunal have recorded the finding with regard to the contention of the Assessing Officer for unexplained decline in gross profit rate to the effect that the GP rate fell sharply in the post-demonetization period compared to the pre-demonetization

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period and explanation tendered by the assessee was unsatisfactory, but the undisputed fact remains that the excess stock found during the survey was not reflected in the books, and CIT(Appeals) held that the books are liable to be rejected under Section 145 and estimated a fresh gross profit addition of Rs.96 lakhs as normal business income, which is not under Section 68 linked to the low GP period, giving relief for the balance amount of Rs.6,92,85,082/-. It was therefore submitted that not the entire addition of Rs.7.88 Crore is accepted by the CIT(Appeals) and the Tribunal, and the contention of the revenue with regard to the low GP rate is accepted by the CIT(Appeals) and the Tribunal. It was further submitted that there is no evidence on record brought by the revenue with regard to the bogus sales, and contention raised on behalf of the revenue that the onus is upon the assessee is also not tenable in absence of any primary documentary evidence on record to show that there was a bogus sale, except the forensic report of backdated entries of the sales. However, the fact remains that the assessee had made the sales on 08.11.2016 in lieu of the available stock on record, which is not in dispute.

21.2. Learned advocate Mr.Soparkar submitted that the CIT(Appeals) and the Tribunal have arrived at a concurrent

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finding that the sales were already recorded and taxed as income in the hands of the assessee, and treating the same amount as unexplained cash credit would result into double taxation, as the character of receipt cannot change from sales to unaccounted income, once such income is offered to tax by the assessee. The Tribunal has confirmed the findings of the CIT(Appeals) that there was no bogus purchases, no negative stock, no excess stock found during survey commensurating with the alleged bogus sales, as the case of the revenue was purely based on suspicion and surrounding circumstances in absence of any incriminating material. It was therefore submitted that both the CIT(Appeals) and the Tribunal have rejected the theory of backdated entries by giving cogent reasons. It was, therefore, submitted that reliance on forensic report, more particularly, the sequence number anomaly, was attributable to a software error arising from reopening/resaving entries, which cannot be considered as a proof of backdating, and the Departmental Representative was also not able to rebut the same before the Tribunal. It was therefore submitted that both the CIT(Appeals) and the Tribunal have accepted the practical, hard reality of demonetization rush explained by the assessee on 08.11.2016 which resulted in the sales spike, supported by the physical stock available with the assessee, which is not disputed by the Assessing Officer in making the

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addition on account of bogus sales. It was further submitted that the Tribunal has also rejected the appeal of the assessee challenging the addition on account of confirming the GP addition of Rs.96 lakhs and no further appeal is filed by the assessee.

21.3. Learned advocate Mr. Soparkar referred to and relied upon the paper book filed before the Tribunal and stock registers separately produced on record to show that the purchase, sales, and quantity of stock could reconcile, which was available with the assessee on the date of the demonetization.

21.4. It was submitted that the purchase register from 01.04.2016 to 31.03.2017 is available at page Nos. 196 to 209 of the paper book filed before the Tribunal, whereas the sales register from 01.01.2017 to 31.01.2017 is available from page Nos. 210 to 216, and there is reconciliation of the stock on the purchase and sales. Therefore, there was sufficient stock available with the assessee at the relevant point of time.

21.5. Learned advocate Mr. Soparkar also placed on record

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the trading stock ledger so as to tally the purchase and sales shown in the purchase register and stock register placed on record.

21.6. In support of his submission, reliance was also placed on the decision of this Court in case of ***The Principal Commissioner of Income Tax v. Jewel World, rendered on 23.06.2026 in Tax Appeal No. 554 of 2025.***

21.7. Regarding the issue of addition of excess stock of Rs.1.14 crore restricted to Rs.95 lakhs under Section 69B of the Act, it was submitted that CIT(Appeals) and the Tribunal have accepted the factual contention of the assessee that quantity of 18CT gold jewellry of 1510.210 grams lying in the vault on the first floor was not included by the survey team by taking the physical stock count, which distorted stock shortage computation. It was therefore submitted that after adjusting for the vault stock and reworking item-wise figures, the CIT(Appeals) recomputed the correct excess stock valuation at Rs.95,41,057/- as against Rs.1.14 crore as per the assessment order, and since the books had already been rejected under Section 145 of the Act and gross profit addition of Rs.96 lakhs had already been confirmed, the CIT(Appeals) held that such

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addition would cover the excess stock findings and no separate addition was required for the unexplained stock investment to avoid double addition of the same underlying discrepancy. It was submitted that the Tribunal also recorded that during the course of survey, when the statement of Shri Kishor Soni, partner of the assessee firm, was recorded which was considered by the Assessing Officer to make addition of Rs.1.14 Crore, the CIT(Appeals) arrived at a factual finding that registered valuer had found excess 1510.210 grams of 18CT gold jewellry on the first floor, which was not considered during the course of survey, and therefore, the reworking of the excess stock was made to Rs.95,41,051/-. Similarly, for the excess cash of Rs.13,33,961/-, the CIT(Appeals) accepted the reconciliation submitted by the assessee to the effect that such excess cash represented the purchases already disallowed under Section 40A(3) in the return of income as the same is already offered to tax by the assessee's own action and the balance was explained by the partners' withdrawal recorded in the books post-survey. It was therefore, submitted that in view of such findings of fact recorded by both the CIT(Appeals) and the Tribunal, no interference is required to be made in the impugned order passed by the Tribunal.

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22. Having heard the learned advocates for the parties and considering the facts of the case as well as the concurrent findings arrived at by the CIT(Appeals) and the Tribunal, it appears that on 08.11.2016, when demonetization was announced, there was a heavy rush to purchase the jewellry by the citizens and such fact is judicially noted by us.

23. It is not in dispute that there was a sufficient stock available in the physical form as well as on record of the assessee to justify the sales made during the 240 minutes available on 08.11.2016. Therefore, the theory of backdated entries based upon the forensic report referred to and relied upon by the Assessing Officer is rightly not accepted by the CIT(Appeals) and the Tribunal.

24. In the facts of the case, the Assessing Officer has tried to correlate the sales made during the demonetization period and the excess stock found during the course of survey. According to us, both the CIT(Appeals) and the Tribunal have rightly separated both the issues, as the CIT(Appeals) has retained the GP addition of Rs.96 lakhs, which is upheld by the Tribunal by dismissing the appeal filed by the assessee due to the rejection of the books of accounts. Mere rejection of the books

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of accounts would not obviate the stock register maintained by the assessee. Both the CIT(Appeals) and the Tribunal have referred to and relied upon the reconciliation of the stock on the date of demonetization as well as while reconciliation submitted by the assessee at the time of survey. Therefore, in view of such findings of fact recorded by both the CIT(Appeals) and the Tribunal, it would be difficult for this Court to accept the contention raised on behalf of the revenue that there was a bogus sales on account of the backdated entries in the books of accounts of the assessee, where such books of accounts are already rejected under Section 145 of the Act resulting into addition of Rs.96 lakhs on account of the gross profit ratio worked out by the CIT(Appeals), which is accepted by the assessee by not preferring further appeal against the order of dismissal of the appeal of the assessee by the Tribunal.

25. With regard to the excess stock addition restricted by the CIT(Appeals) and the Tribunal, as well as the deletion of the excess stock found during the course of survey, which was considered for addition to be made under Section 69B of the Act, there are concurrent findings of fact recorded by both the CIT(Appeals) and the Tribunal, and on considering such findings, we are of the opinion that the same cannot be

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considered as perverse in absence of any material to show such perversity or any factors which are ignored or factors which are considered which is irrelevant as per the revenue. It is also pertinent to note that the contention raised on behalf of the revenue that the onus would be on the assessee to prove that the addition made by the Assessing Officer under Section 68 and 69B does not represent the unaccounted cash introduced by the assessee in the record. It is pertinent to note that both the CIT(Appeals) and the Tribunal have arrived at a concurrent finding of fact that the assessee has offered the entire sales made during the period, which is accepted by the Assessing Officer, moreover the purchases shown in the books of accounts made by the assessee are not at all disturbed. Only on the ground that the assessee has shown the cash sales due to demonetization, cannot be considered as a factor to shift the onus on the assessee for making addition under Section 68 of the Act so as to tax the assessee at a higher rate of tax under Section 115BBE of the Act, inasmuch as the assessee has already offered the entire sales for tax by including the same under the sales income.

26. In view of the concurrent findings of fact, the contention raised on behalf of the revenue is also not acceptable in the

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facts of the case.

27. In view of the foregoing reasons, we are of the opinion that there is no legal infirmity in the impugned order of the Tribunal, and no question of law, much-less any substantial question of law, can be said to arise from the impugned order. Therefore, the appeal is accordingly dismissed.

(BHARGAV D. KARIA, J)

(NIRZAR S. DESAI,J)

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