

Delhi High Court Lalsons Enterprises vs Asstt. Cit on 27 March, 2003 Equivalent citations: (2004) 86 TTJ Del 1050 ORDER Phool Singh, J.M. This appeal, preferred by the assessed, is directed against order dated 21-3-2002, of CIT-III, New Delhi passed under section 263 of the Income Tax Act, 1961 (hereafter referred to as the "Act"), revising the income to Rs. 1,31,72,990 as against Rs. 5,60,720 originally assessed in the order dated 30-3-2000, passed under section 143(3) of the Act. 2. Relevant facts giving rise to this appeal are that assessed filed return for assessment year 1998-99 at an income of Rs. 5,57,680 and assessment was completed under section 143(3) of the Act at Rs. 5,60,720 by the assessing officer. After going through the record the learned CIT was of the view that assessment completed by the assessing officer was erroneous and prejudicial to the interest of revenue. Accordingly, he issued notice under section 263 of the Act to the assessed pointing out different errors committed by the assessing officer in respect of different disallowances etc. and after considering the reply submitted by the assessed the CIT passed impugned order by which he was recomputed the income of the assessed to the extent of Rs. 1,31,72,990 making out different disallowances and additions. At the very outset the learned counsel referring to the impugned order passed by the learned CIT submitted that the learned CIT had recomputed deduction under section 80HHC of the Act and also made separate computation of total income by making disallowances and also making different additions on account of undisclosed investment in stock etc. and directed the assessing officer to modify the assessment order under section 143(3) of the Act and to issue demand notice and challan as well as penalty notice. The contention of the learned counsel is that learned CIT had not set aside the assessment order with direction to assessing officer to reframe the assessment order but he has already completed the assessment order and assessing officer was supposed to carry out the necessary direction and to issue demand notice and challan as per income computed by the learned CIT. The learned counsel submitted that different disallowances and additions made by the learned CIT are being challenged through different grounds of appeal and he started arguing the matter as per grounds raised in the grounds of appeal. We are disposing of the grounds accordingly as per arguments of the learned Counsel as well as the learned departmental Representative. 2. Relevant facts giving rise to this appeal are that assessed filed return for assessment year 1998-99 at an income of Rs. 5,57,680 and assessment was completed under section 143(3) of the Act at Rs. 5,60,720 by the assessing officer. After going through the record the learned CIT was of the view that assessment completed by the assessing officer was erroneous and prejudicial to the interest of revenue. Accordingly, he issued notice under section 263 of the Act to the assessed pointing out different errors committed by the assessing officer in respect of different disallowances etc. and after considering the reply submitted by the assessed the CIT passed impugned order by which he was recomputed the income of the assessed to the extent of Rs. 1,31,72,990 making out different disallowances and additions. At the very outset the learned counsel referring to the impugned order passed by the learned CIT submitted that the learned CIT had recomputed deduction under section 80HHC of the Act and also made separate computation

of total income by making disallowances and also making different additions on account of undisclosed investment in stock etc. and directed the assessing officer to modify the assessment order under section 143(3) of the Act and to issue demand notice and challan as well as penalty notice-The contention of the learned counsel is that learned CIT had not set aside the assessment order with direction to assessing officer to reframe the assessment order but he has already completed the assessment order and assessing officer was supposed to carry out the necessary direction and to issue demand notice and challan as per income computed by the learned CIT. The learned counsel submitted that different disallowances and additions made by the learned CIT are being challenged through different grounds of appeal and he started arguing the matter as per grounds raised in the grounds of appeal. We are disposing of the grounds accordingly as per arguments of the learned Counsel as well as the learned departmental Representative. 3. In grounds of appeal Nos. 1 and 1.1 the assessed has challenged the impugned order on the ground of jurisdiction. The learned counsel for the assessed made arguments on the issue of jurisdiction while dealing with specific grounds of appeals. It is, therefore, not necessary for us to advert to the arguments on this issue at this stage. 3. In grounds of appeal Nos. 1 and 1.1 the assessed has challenged the impugned order on the ground of jurisdiction. The learned counsel for the assessed made arguments on the issue of jurisdiction while dealing with specific grounds of appeals. It is, therefore, not necessary for us to advert to the arguments on this issue at this stage. 4. Grounds of appeal Nos. 2 to 2.3 relate to disallowance of interest amounting to Rs. 18,53,916 out of the interest payable to Bank. The CIT in the impugned order under section 263 has alleged that the amounts advanced to the aforesaid concerns, interest-free, were diverted out of borrowed funds, on which no interest was charged. The CIT has computed interest attributable to amounts advanced to Damas Jewels at Rs. 8,51,125 and Rs. 10,02,391 in respect of amounts advanced to Lal Jewels. From the total interest. claimed as expenditure, CIT has disallowed deduction for the aggregate sum of Rs. 18,53,916. 4. Grounds of appeal Nos. 2 to 2.3 relate to disallowance of interest amounting to Rs. 18,53,916 out of the interest payable to Bank. The CIT in the impugned order under section 263 has alleged that the amounts advanced to the aforesaid concerns, interest-free, were diverted out of borrowed funds, on which no interest was charged. The CIT has computed interest attributable to amounts advanced to Damas Jewels at Rs. 8,51,125 and Rs. 10,02,391 in respect of amounts advanced to Lal Jewels. From the total interest. claimed as expenditure, CIT has disallowed deduction for the aggregate sum of Rs. 18,53,916. 5. Before us the learned counsel of the appellant submitted that the appellant had business relationship with Damas Jewels in as much as the appellant purchased pure gold from the said concerns and also got the jewellery fabricated from the said party against payment of making charges. A copy of the ledger accounts of M/s Damas Jewels as appearing in the books of the appellant is placed in the paper book at pp. 142-156. It was further submitted that the amounts advanced from time to time are in the course of business and there is no practice between Damas Jewels and the appellant for paying/charging interest on the intra-party outstanding balances. 5. Before us

the learned counsel of the appellant submitted that the appellant had business relationship with Damas Jewels in as much as the appellant purchased pure gold from the said concerns and also got the jewellery fabricated from the said party against payment of making charges. A copy of the ledger accounts of M/s Damas Jewels as appearing in the books of the appellant is placed in the paper book at pp. 142-156. It was further submitted that the amounts advanced from time to time are in the course of business and there is no practice between Damas Jewels and the appellant for paying/charging interest on the intra-party outstanding balances. 6. It was further contended that since the amount advanced from time to time were in the course of business, no disallowance of interest is warranted in such circumstances. It was further contended that there was no disallowance of interest in earlier years. Reliance for the aforesaid is placed on the following decisions 6. It was further contended that since the amount advanced from time to time were in the course of business, no disallowance of interest is warranted in such circumstances. It was further contended that there was no disallowance of interest in earlier years. Reliance for the aforesaid is placed on the following decisions (i) D&H Secheron Electrodes (P) Ltd. v. CIT (1983) 35 CTR (MP) 41 (1983) 142 ITR 528 (MP) (ii) D&H Secheron Electrodes (P) Ltd. v. CIT (1984) 40 CTR (MP) 366: (1984) 149 ITR 400 (MP) 7. In support of the statement, the learned counsel stated that the appellant owed monies to M/s Damas Jewels to the extent of Rs.,43,92,100 as on 31-3-1996, on which no interest was paid to the said party (p. 193 of the paper book), while the amounts receivable from the said party as on 31-3-1997 and 31-3-1998, stood at Rs. 8,12,900 and Rs. 8,31,900 respectively. 7. In support of the statement, the learned counsel stated that the appellant owed monies to M/s Damas Jewels to the extent of Rs.,43,92,100 as on 31-3-1996, on which no interest was paid to the said party (p. 193 of the paper book), while the amounts receivable from the said party as on 31-3-1997 and 31-3-1998, stood at Rs. 8,12,900 and Rs. 8,31,900 respectively. 8. As regards M/s Lal Jewels, it was explained by Shri Ajay Vohra that the appellant has been advancing funds to/receiving funds from M/s Lal Jewels intermittently during the relevant previous year on which' no interest was charged by either party. The non-charging of interest, it was submitted, on intra-company outstanding balance was on account of commercial expediency. To further the contention regarding the business expediency, a chart showing the position of interest payable to/receivable from Lal Jewels has been placed at paper book on p. 193. As per the said chart, the interest payable on the credit balance of M/s Lal Jewels works out to Rs. 4,59,502 as against interest receivable, which computes to Rs. 64,150, It was pointed out that the calculation of interest attributable to the amounts advanced to M/s Lal Jewels made by the CIT was completely erroneous. 8. As regards M/s Lal Jewels, it was explained by Shri Ajay Vohra that the appellant has been advancing funds to/receiving funds from M/s Lal Jewels intermittently during the relevant previous year on which' no interest was charged by either party. The non-charging of interest, it was submitted, on intra-company outstanding balance was on account of commercial expediency. To further the contention regarding the business expediency, a chart showing the position of interest

payable to/receivable from Lal Jewels has been placed at paper book on p. 193. As per the said chart, the interest payable on the credit balance of M/s Lal Jewels works out to Rs. 4,59,502 as against interest receivable, which computes to Rs. 64,150. It was pointed out that the calculation of interest attributable to the amounts advanced to M/s Lal Jewels made by the CIT was completely erroneous. 9. In the final leg of his arguments, the learned counsel for the appellant submitted that the appellant maintains a mixed pool of funds. The loans received against packing credit are deposited in the current account maintained by the appellant. There is no separate loan or overdraft facility, for financing the working capital requirements. Further, the interest-free funds available with the appellant in the form of partners capital as on 31-3-1998, amounted to Rs. 328.57 lacs while the amount outstanding against packing credit was Rs. 279.12 lacs only which shows that the own funds sufficiently covered the advances to sister concerns borrowed capital. Even otherwise, where there is a mixed pool of funds, it was contended that the Courts have held that funds should be appropriated in the manner most beneficial to the assessed. Reference in this regard was made to the decision of *Indian Explosives Ltd. v. CIT* (1983) 35 CTR (Cal) 244 : (1984) 147 ITR 392 (Cal), *Alkali & Chemicals Corporation of India Ltd. v. CIT* (1986) 50 CTR (Cal) 139 : (1986) 161 ITR 820 (Cal) and *Marnite Polycast Ltd. v. Assistant Commissioner 0 995* 53 ITD 345 (Del), 9. In the final leg of his arguments, the learned counsel for the appellant submitted that the appellant maintains a mixed pool of funds. The loans received against packing credit are deposited in the current account maintained by the appellant. There is no separate loan or overdraft facility, for financing the working capital requirements. Further, the interest-free funds available with the appellant in the form of partners capital as on 31-3-1998, amounted to Rs. 328.57 lacs while the amount outstanding against packing credit was Rs. 279.12 lacs only which shows that the own funds sufficiently covered the advances to sister concerns borrowed capital. Even otherwise, where there is a mixed pool of funds, it was contended that the Courts have held that funds should be appropriated in the manner most beneficial to the assessed. Reference in this regard was made to the decision of *Indian Explosives Ltd. v. CIT* (1983) 35 CTR (Cal) 244 : (1984) 147 ITR 392 (Cal), *Alkali & Chemicals Corporation of India Ltd. v. CIT* (1986) 50 CTR (Cal) 139 : (1986) 161 ITR 820 (Cal) and *Marnite Polycast Ltd. v. Assistant Commissioner 0 995* 53 ITD 345 (Del), 10. The learned departmental Representative on the other hand relied on the Ass(order of the CIT. 10. The learned departmental Representative on the other hand relied on the Ass(order of the CIT. 11. We have gone through the order of the CIT and have considered the arguments advanced before us. The appellant has been advancing funds to Damas Jewels from time to time and also been receiving funds from the said parties. The departmental Representative has not controverted the submission that no interest is being charged by either party. It is also seen that in earlier year no interest was paid by the appellant. Further, the business relationship between the appellant and Damas Jewels is not disputed/doubted and the fact that advances have been made in the course of business is borne out from record. 11. We have gone through the order of the CIT and have considered the argu-

ments advanced before us. The appellant has been advancing funds to Damas Jewels from time to time and also been receiving funds from the said parties. The departmental Representative has not controverted the submission that no interest is being charged by either party. It is also seen that in earlier year no interest was paid by the appellant. Further, the business relationship between the appellant and Damas Jewels is not disputed/doubted and the fact that advances have been made in the course of business is borne out from record. 12. The Madhya Pradesh High Court in the case of D&H Secheron Electrodes (P) Ltd. (supra) has held disallowance of part of the interest paid by the assessee on sums advanced to sister concern in the course of business as not justified'. 12. The Madhya Pradesh High Court in the case of D&H Secheron Electrodes (P) Ltd. (supra) has held disallowance of part of the interest paid by the assessee on sums advanced to sister concern in the course of business as not justified'. 13. For the aforesaid reasons, we agree with the learned counsel for the 13. For the aforesaid reasons, we agree with the learned counsel for the assessee that there is no basis for the disallowance of interest in respect of amounts advanced to M/s Damas Jewels. 14. With regard to the disallowance made by the CIT in respect of monies let to M/s Lal Jewels, a perusal of the account shows movement of funds in either direction'. The learned departmental Representative could not rebut the argument of the learned counsel that if interest was to be paid on intra-party balances, the interest payable by the appellant would have been more than the interest receivable. For that reason alone, the disallowance made on an erroneous working has no legs to stand on. 14. With regard to the disallowance made by the CIT in respect of monies let to M/s Lal Jewels, a perusal of the account shows movement of funds in either direction'. The learned departmental Representative could not rebut the argument of the learned counsel that if interest was to be paid on intra-party balances, the interest payable by the appellant would have been more than the interest receivable. For that reason alone, the disallowance made on an erroneous working has no legs to stand on. 15. There is merit in the alternate submission that, even otherwise, looking into the fact that the appellant is maintaining a mixed pool of funds and does not maintain any separate overdraft account, no disallowance of interest is sustainable. On perusal of the audited accounts placed in the paper book, it emerges that the interest-free funds available with the appellant in the form of partners' capital, as on 31-3-1998, amounted to Rs. 3,28.51 lacs (p. 72) while the amounts outstanding against packing credit was Rs. 279.12 lacs (p. 75). Against the aforesaid, amount due from Damas Jewels amounted to Rs. 8.31 lacs and M/s Lal Jewels amounted to Rs. 40.20 lacs aggregating to Rs. 48.5 lacs. On the basis of probability, the amount outstanding in the name of the aforesaid parties could have come out of interest-free funds available with the appellant. On the aforesaid facts, we are unable to agree with the view adopted by the CIT, especially, when even the balance of probability that the funds could have come out of the surplus funds of the appellant is heavily inclined in favor of the appellant. The said view is fortified by decision of the Calcutta High Court in Indian Explosives case (supra) and this Tribunal decision in Mar-nite's case (supra) wherein it has been held that where there is a mixed pool of

funds, the funds should be appropriated in the manner most beneficial to the assessed. 15. There is merit in the alternate submission that, even otherwise, looking into the fact that the appellant is maintaining a mixed pool of funds and does not maintain any separate overdraft account, no disallowance of interest is sustainable. On perusal of the audited accounts placed in the paper book, it emerges that the interest-free funds available with the appellant in the form of partners' capital, as on 31-3-1998, amounted to Rs. 3,28.51 lacs (p. 72) while the amounts outstanding against packing credit was Rs. 279.12 lacs (p. 75). Against the aforesaid, amount due from Damas Jewels amounted to Rs. 8.31 lacs and M/s Lal Jewels amounted to Rs. 40.20 lacs aggregating to Rs. 48.5 lacs. On the basis of probability, the amount outstanding in the name of the aforesaid parties could have come out of interest-free funds available with the appellant. On the aforesaid facts, we are unable to agree with the view adopted by the CIT, especially, when even the balance of probability that the funds could have come out of the surplus funds of the appellant is heavily inclined in favor of the appellant. The said view is fortified by decision of the Calcutta High Court in Indian Explosives case (supra) and this Tribunal decision in Marnite's case (supra) wherein it has been held that where there is a mixed pool of funds, the funds should be appropriated in the manner most beneficial to the assessed.

16. For the commutative reasoning given aforesaid the learned CIT was not justified to make the said disallowance of interest of Rs. 18,53,916 and directing the assessing officer to complete the assessment accordingly. The order of CIT is set aside to that extent. 16. For the commutative reasoning given aforesaid the learned CIT was not justified to make the said disallowance of interest of Rs. 18,53,916 and directing the assessing officer to complete the assessment accordingly. The order of CIT is set aside to that extent. 17. Ground of appeal No. 3 challenges the addition of Rs. 47,525 made by the CIT to the appellant's income, as undisclosed investment. The CIT in his order under section 263 of the Act has worked out the discrepancies in the valuation/Quantity of stock of gold jewellery and bars. As per the CIT, the appellant has declared excess stock of gold jewellery and bars to the extent of 51.381 gms and 26.44 gms valued at Rs. 36,587 and Rs. 10,938 respectively. 17. Ground of appeal No. 3 challenges the addition of Rs. 47,525 made by the CIT to the appellant's income, as undisclosed investment. The CIT in his order under section 263 of the Act has worked out the discrepancies in the valuation/Quantity of stock of gold jewellery and bars. As per the CIT, the appellant has declared excess stock of gold jewellery and bars to the extent of 51.381 gms and 26.44 gms valued at Rs. 36,587 and Rs. 10,938 respectively. 18. The learned counsel of the appellant explained that the CIT has not appreciated the facts of the case in the correct perspective. It was submitted that in the ledger account for diamond purchase (Annex. IV(1) to the CIT's order), purchase of diamond jewellery from Mr. Ashok Kumar Jain for Rs. 2,86,100 was being reflected, which included gold of the net weight of 26.40 gms. In the details given to the CIT during the course of section 263 proceedings, diamond jewellery for Rs. 2,86,100 having net gold weight was shown as part of gold purchased resulting in aggregate gold purchase of 5,70,828 (5,70,801.56 + 26.44 gms.) valued at Rs. 22,82,73,680. It was contended that CIT had wrongly

held that the gold to the extent of 26.44 gms was purchased outside the books when in fact the entire purchase of gold jewellery was recorded in the books of accounts, although under different ledger accounts. Similarly, in respect of gold jewellery, the CIT has proceeded on a wrong basis for making the addition of Rs. 36,587. In this case, too, the appellant had recorded the purchase of diamond jewellery in the diamond purchase ledger account, which contained net gold weight of 51.25 gms. It was submitted on behalf of the appellant that in order to reconcile the total gold purchased during the course of section 263 proceedings, the same was reduced from the diamond purchase account and added to the gold purchase account to facilitate the reconciliation. 18. The learned counsel of the appellant explained that the CIT has not appreciated the facts of the case in the correct perspective. It was submitted that in the ledger account for diamond purchase (Annex. IV(1) to the CIT's order), purchase of diamond jewellery from Mr. Ashok Kumar Jain for Rs. 2,86,100 was being reflected, which included gold of the net weight of 26.40 gms. In the details given to the CIT during the course of section 263 proceedings, diamond jewellery for Rs. 2,86,100 having net gold weight was shown as part of gold purchased resulting in aggregate gold purchase of 5,70,828 (5,70,801.56 + 26.44 gms.) valued at Rs. 22,82,73,680. It was contended that CIT had wrongly held that the gold to the extent of 26.44 gms was purchased outside the books when in fact the entire purchase of gold jewellery was recorded in the books of accounts, although under different ledger accounts. Similarly, in respect of gold jewellery, the CIT has proceeded on a wrong basis for making the addition of Rs. 36,587. In this case, too, the appellant had recorded the purchase of diamond jewellery in the diamond purchase ledger account, which contained net gold weight of 51.25 gms. It was submitted on behalf of the appellant that in order to reconcile the total gold purchased during the course of section 263 proceedings, the same was reduced from the diamond purchase account and added to the gold purchase account to facilitate the reconciliation. 19. The learned departmental Representative relied on the order of the CIT and did not contradict the factual averments on the side of the assessed. 19. The learned departmental Representative relied on the order of the CIT and did not contradict the factual averments on the side of the assessed. 20. We have carefully considered the submissions made by both the parties. The appellant prepared a chart explaining the aforesaid facts. On the perusal of the said chart, it was evident that the gold jewellery to the extent of 51.25 gms and 26.44 gms respectively were recorded in the books of accounts. As per the said chart, the appellant had reduced the gold weight of 26.44 gms. from the diamond purchase account, being the quantity of gold in the diamond jewellery purchased and corresponding additions were made to the jewellery purchased/import account and gold purchased local account. It was not disputed by the learned departmental Representative that there was no difference in the aggregate; the difference was only on the groupings. 20. We have carefully considered the submissions made by both the parties. The appellant prepared a chart explaining the aforesaid facts. On the perusal of the said chart, it was evident that the gold jewellery to the extent of 51.25 gms and 26.44 gms respectively were recorded in the books of accounts. As per the said chart, the

appellant had reduced the gold weight of 77.65 gms. from the diamond purchased account, being the quantity of gold in the diamond jewellery purchased and corresponding additions were made to the jewellery purchased/import account and gold purchased local account. It was not disputed by the learned departmental Representative that there was no difference in the aggregate; the difference was only on the groupings. 21. We agree with the learned counsel that the CIT has not correctly appreciated the facts while making additions on account of undisclosed investment. When the appellant has already recorded the alleged excess stock of gold in the books of accounts, no addition on this account could have been made. 21. We agree with the learned counsel that the CIT has not correctly appreciated the facts while making additions on account of undisclosed investment. When the appellant has already recorded the alleged excess stock of gold in the books of accounts, no addition on this account could have been made. 22. Before parting, we may mention that the appellant had raised alternative contention before us that even if the finding as regards excess stock of gold was to be upheld, still no addition could have been made since the appellant had already included the alleged excess stock in its taxable income and no further addition was warranted. Having already decided the issue in favor of the appellant on facts, in our opinion, there is no need for us to give finding on the said proposition. 22. Before parting, we may mention that the appellant had raised alternative contention before us that even if the finding as regards excess stock of gold was to be upheld, still no addition could have been made since the appellant had already included the alleged excess stock in its taxable income and no further addition was warranted. Having already decided the issue in favor of the appellant on facts, in our opinion, there is no need for us to give finding on the said proposition. 23. Ground of appeal No. 4 relates to addition on account of alleged undisclosed investment in diamond stock. Explaining the facts leading to the disallowance, Shri Ajay Vohra submitted that the CIT in his order has arrived at value of closing stock of diamond at Rs. 19,58,332. The working of the said figure was submitted before us,, which is reproduced. hereunder 23. Ground of appeal No. 4 relates to addition on account of alleged undisclosed investment in diamond stock. Explaining the facts leading to the disallowance, Shri Ajay Vohra submitted that the CIT in his order has arrived at value of closing stock of diamond at Rs. 19,58,332. The working of the said figure was submitted before us,, which is reproduced. hereunder Opening stock 4,43,150 (as adopted by CIT in assessment year 1997-98) Add Purchases 15,15,182 Total 19,58,332 Less Sales Nil Closing Stock 19,58,332 24. As against this, the appellant had declared closing stock of diamond at Rs. 29,17,757. 24. As against this, the appellant had declared closing stock of diamond at Rs. 29,17,757. 25. Challenging the basis adopted by the CIT, it was contended on behalf of the appellant that additions have been made without any query being raised in that behalf to the appellant and on that basis alone, addition made cannot be sustained. 25. Challenging the basis adopted by the CIT, it was contended on behalf of the appellant that additions have been made without any query being raised in that behalf to the appellant and on that basis alone, addition made cannot be sustained. 26. Alternatively, it

was vehemently contended on behalf of the appellant that, in any case, no further addition could have been made to the income of the appellant considering that by showing higher valuation of stock, the appellant had already inflated its profits and thereby taxable income. The learned counsel for the appellant further pleaded that in such circumstances, the order of the assessing officer accepting higher valuation could not be said to be erroneous. Reliance in support of the above proposition have been placed on the orders of Tribunal in the cases of Income Tax Officer v. Naresh Fabric (2002) 75 7-TJ Ud) 386 and Industrial Training Co. v. Income Tax Officer (1994) 50 TTJ (Bang) 177. 26. Alternatively, it was vehemently contended on behalf of the appellant that, in any case, no further addition could have been made to the income of the appellant considering that by showing higher valuation of stock, the appellant had already inflated its profits and thereby taxable income. The learned counsel for the appellant further pleaded that in such circumstances, the order of the assessing officer accepting higher valuation could not be said to be erroneous. Reliance in support of the above proposition have been placed on the orders of Tribunal in the cases of Income Tax Officer v. Naresh Fabric (2002) 75 7-TJ Ud) 386 and Industrial Training Co. v. Income Tax Officer (1994) 50 TTJ (Bang) 177. 27. We have heard both the parties. The difference in the closing stock arises on account of (i) difference in the valuation of opening stock, subject of consideration, in assessment year 1997-98; and (ii) difference in the rate adopted for valuation of diamonds in closing stock (though there is no difference in quantity). The assessed contends that stock of diamonds had been valued at the market price thereof while the CIT has adopted a lower value. There is no evidence furnished by either the assessed or the CIT in support of the respective valuations adopted. We do not propose to go into the issue of determining the rate to be adopted for valuation of closing stock of diamonds. Suffice to say that no further addition is called for since the assessed has already disclosed higher valuation of closing stock and thereby higher profit and there is no difference in the quantitative tally. 27. We have heard both the parties. The difference in the closing stock arises on account of (i) difference in the valuation of opening stock, subject of consideration, in assessment year 1997-98; and (ii) difference in the rate adopted for valuation of diamonds in closing stock (though there is no difference in quantity). The assessed contends that stock of diamonds had been valued at the market price thereof while the CIT has adopted a lower value. There is no evidence furnished by either the assessed or the CIT in support of the respective valuations adopted. We do not propose to go into the issue of determining the rate to be adopted for valuation of closing stock of diamonds. Suffice to say that no further addition is called for since the assessed has already disclosed higher valuation of closing stock and thereby higher profit and there is no difference in the quantitative tally. 28. In Naresh Fabric (supra), the Jodhpur Bench of the Tribunal had before it a case where the assessing officer during the course of the assessment proceedings, worked out the month-wise quantitative details of purchases and sales made by the assessed and noticed that sales made by it exceeded the purchases made during a particular month. He accordingly concluded that the assessed had unrecorded purchases to the

extent of excess sales shown by the assessed. 28. In Naresh Fabiic (supra), the Jodhpur Bench of the Tribunal had before it a case where the assessing officer during the course of the assessment proceedings, worked out the month-wise quantitative details of purchases and sales made by the assessed and noticed that sales made by it exceeded the purchases made during a particular month. He accordingly concluded that the assessed had unrecorded purchases to the extent of excess sales shown by the assessed. 29. The Bench while deleting the additions, observed that 29. The Bench while deleting the additions, observed that “The other contention of the learned counsel of the assessed on this issue is that corresponding sales in respect of unrecorded purchases have been duly recorded by the assessed in his books. of account’and accordingly the value of purchases including profit thereon has got declared in the income returned by the assessed and as such additions made on account of unexplained investment in such purchases would amount to double taxation. We find force in this contention of the learned counsel of the assessed, inasmuch as the entire amount of sales corresponding to the unrecorded purchases including profit thereon stands declared by the assessed and hence no separate additions on this account is warranted. Even if the additions are made on account of unexplained investment in purchase, similar amount of allowance is required to be granted simultaneously on account of expenditure on purchases not recorded in the books of account of the assessed and as such remained unclaimed. This view also gets support by the decision of the Tribunal Bangalore Bench (supra) cited by the learned counsel for the assessed involving identical facts wherein the Bangalore Bench has held as under”. we find that since in this particular case, the Income Tax Officer proceeded with the assumption that all the sales have been accounted for and that only part of the purchases have been made outside the books, there is no scope for making any separate addition on the ground of unaccounted purchases. Whatever addition is required to be made in this regard will have to be again given credit for as a component of purchase, in arriving at the real profit of the business. It is to be remembered that this is not a case where a part of the business consisting of the purchase and sale operations totally are outside the books.’ 30. The Jodhpur Bench in arriving at the aforesaid conclusion relied on the decision of the Bangalore Bench in the case of Industrial Training (supra). The facts in the present case are similar to Naresh Fabric and the ratio of the decision of the Jodhpur Bench, in our opinion, would apply to the present case, too. We concur with our learned brothers of the Jodhpur Bench in holding that the assessed having already recorded the excess stock, if any, no further addition was warranted. The ground of appeal is allowed, 30. The Jodhpur Bench in arriving at the aforesaid conclusion relied on the decision of the Bangalore Bench in the case of Industrial Training (supra). The facts in the present case are similar to Naresh Fabric and the ratio of the decision of the Jodhpur Bench, in our opinion, would apply to the present case, too. We concur with our learned brothers of the Jodhpur Bench in holding that the assessed having already recorded the excess stock, if any, no further addition was warranted. The ground of appeal is allowed, 31. In ground of appeal No. 5, addition on account of sale of silver and precious stones outside the books of

account has been challenged. The CIT has made addition of Rs. 88,26,126 on account of shortage of stock of silver and precious stones of Rs. 73,12,948 and Rs. 42,157 respectively holding the same to have been sold outside the books of accounts. Further, the CIT also made an addition of Rs. 14,71,021 as the profit 'on the aforesaid sale plus 20 per cent, Shri Ajay Vohra, learned advocate, in his arguments has vehemently contended that the addition made by the CIT is contrary to the evidence on record and has been made without any application of mind. 31. In ground of appeal No. 5, addition on account of sale of silver and precious stones outside the books of account has been challenged. The CIT has made addition of Rs. 88,26,126 on account of shortage of stock of silver and precious stones of Rs. 73,12,948 and Rs. 42,157 respectively holding the same to have been sold outside the books of accounts. Further, the CIT also made an addition of Rs. 14,71,021 as the profit 'on the aforesaid sale plus 20 per cent, Shri Ajay Vohra, learned advocate, in his arguments has vehemently contended that the addition made by the CIT is contrary to the evidence on record and has been made without any application of mind. 32. It was submitted that during the relevant previous year, the appellant had imported silver amounting to Rs. 1,13,33,215, which was booked as purchases in the books of accounts. The entire silver, it was further submitted, was sold during the relevant previous year at the sale value of Rs. 1,41,77,690 as is apparent from paper No. 87 which is copy of details of total sales which include the amount of sale of silver. It also formed part of the total sales credited to the P&L a/c, i.e., Rs. 36,41,22,261. It was submitted that the CIT had, under a mistaken impression and without seeking any clarification from the appellant, treated the difference between the import value of the silver, i.e., Rs. 1,13,33,261 and the silver moulds held as closing stock amounting to Rs. 40,48,860, as undisclosed stock sold outside the books of accounts. In fact the CIT went a step further and added 20 per cent profit on the alleged sale outside the books of account. 32. It was submitted that during the relevant previous year, the appellant had imported silver amounting to Rs. 1,13,33,215, which was booked as purchases in the books of accounts. The entire silver, it was further submitted, was sold during the relevant previous year at the sale value of Rs. 1,41,77,690 as is apparent from paper No. 87 which is copy of details of total sales which include the amount of sale of silver. It also formed part of the total sales credited to the P&L a/c, i.e., Rs. 36,41,22,261. It was submitted that the CIT had, under a mistaken impression and without seeking any clarification from the appellant, treated the difference between the import value of the silver, i.e., Rs. 1,13,33,261 and the silver moulds held as closing stock amounting to Rs. 40,48,860, as undisclosed stock sold outside the books of accounts. In fact the CIT went a step further and added 20 per cent profit on the alleged sale outside the books of account. 33. It was contended on behalf of the appellant that the aforesaid addition is without any basis in as much as the records in support of the aforesaid facts were before the CIT and the CIT, without making an effort to understand the correct factual position, made the addition on surmises and conjunctures. 33. It was contended on behalf of the appellant that the aforesaid addition is without any basis in as much as the records in support of the aforesaid facts were before the CIT and

the CIT, without making an effort to understand the correct factual position, made the addition on surmises and conjunctures. 34. The learned departmental Representative when confronted with the aforesaid factual position did not controvert the same and merely relied on the order of the CIT. 34. The learned departmental Representative when confronted with the aforesaid factual position did not controvert the same and merely relied on the order of the CIT. 35. We have considered rival submissions and perused the record to which our attention was invited. It appears that learned CIT has not looked into the relevant material submitted by the assessed in reply to the notice and -during the course of hearing before him. It is wrong on the part of learned CIT to observe that no sale of the purchased silver worth Rs. 1,13,33,251 was shown to have made by the assessed nor declared. In this connection we may refer to p. 73 of the paper book of the assessed which is copy of P&L a/c for the period ended on 31-3-1998, and sale worth Rs. 36,41,22,261.98 had been shown. The dbtails of the total sales is appearing at p. 87 and this includes sales of silver worth Rs. 1,41,77,590. Accordingly, the observation of the learned CIT is not on any basis. Further, the amount of closing stock worth Rs. 40,48,860 as undisclosed stock sold outside the books of account had been dealt in the earlier year for which appeal has been disposed of along with this appeal and, that addition was found unwarranted. The result of the above is that the very basis for making the addition of Rs. 88,26,126 is not available and the same stands fully explained by the assessed. Addition was unwarranted and order of the learned CIT to that extent is unsustainable and stands quashed. 35. We have considered rival submissions and perused the record to which our attention was invited. It appears that learned CIT has not looked into the relevant material submitted by the assessed in reply to the notice and -during the course of hearing before him. It is wrong on the part of learned CIT to observe that no sale of the purchased silver worth Rs. 1,13,33,251 was shown to have made by the assessed nor declared. In this connection we may refer to p. 73 of the paper book of the assessed which is copy of P&L a/c for the period ended on 31-3-1998, and sale worth Rs. 36,41,22,261.98 had been shown. The dbtails of the total sales is appearing at p. 87 and this includes sales of silver worth Rs. 1,41,77,590. Accordingly, the observation of the learned CIT is not on any basis. Further, the amount of closing stock worth Rs. 40,48,860 as undisclosed stock sold outside the books of account had been dealt in the earlier year for which appeal has been disposed of along with this appeal and, that addition was found unwarranted. The result of the above is that the very basis for making the addition of Rs. 88,26,126 is not available and the same stands fully explained by the assessed. Addition was unwarranted and order of the learned CIT to that extent is unsustainable and stands quashed. 36. Ground of appeal No. 6 challenges the addition of job charges alleged to have been paid outside the books of account. The facts in brief leading to the disallowance are that the appellant gives pure gold to outside karigars for fabrication of jewellery as per designs/specifications provided by the appellant. The karigars return the readymade fabricated/finished jewellery to the appellant and iat that stage receive job charges for the fabrication work done by them. The job charges are credited to the accounts of the karigars at

the time of receipt of fabricated/finished jewellery. 36. Ground of appeal No. 6 challenges the addition of job charges alleged to have been paid outside the books of account. The facts in brief leading to the disallowance are that the appellant gives pure gold to outside karigars for fabrication of jewellery as per designs/specifications provided by the appellant. The karigars return the ready-made fabricated/finished jewellery to the appellant and at that stage receive job charges for the fabrication work done by them. The job charges are credited to the accounts of the karigars at the time of receipt of fabricated/finished jewellery. 37. The CIT has alleged that the appellant did not disclose any closing stock of work-in-progress and further alleged that the appellant would have paid job charges to the extent of Rs. 3,45,000. 37. The CIT has alleged that the appellant did not disclose any closing stock of work-in-progress and further alleged that the appellant would have paid job charges to the extent of Rs. 3,45,000. 38. Before us, the learned counsel of the appellant submitted that the appellant does not fabricate jewellery itself and gets the same fabricated by the outside karigars and the job charges are credited/paid to them on receipt of finished jewellery. In the books of account of the appellant there is no inventory on account of semi-finished jewellery or work-in-progress. It was contended that the CIT's allegation that no work-in-progress has been declared and the addition made on that basis is without any legal force and is divorced from the factual position. 38. Before us, the learned counsel of the appellant submitted that the appellant does not fabricate jewellery itself and gets the same fabricated by the outside karigars and the job charges are credited/paid to them on receipt of finished jewellery. In the books of account of the appellant there is no inventory on account of semi-finished jewellery or work-in-progress. It was contended that the CIT's allegation that no work-in-progress has been declared and the addition made on that basis is without any legal force and is divorced from the factual position. 39. The departmental Representative on the other hand relied on the order of the CIT. 39. The departmental Representative on the other hand relied on the order of the CIT. 40. We have carefully considered the submission made by the learned counsel of the appellant and gone through the order of the CIT. The appellant has been consistently following the practice of recording only fully fabricated jewellery in its books of accounts as and when the same is received from outside job workers. The addition made is wholly unwarranted in as much as the appellant does not carry inventory on account of work-in-progress. The CIT apart from making a bald allegation, has brought nothing on record to substantiate the same. There is not even an iota of evidence on record to suggest payment of job charges outside the books of account. We, therefore, have no hesitation in deleting the addition made on this account. This ground of appeal of the appellant succeeds. 40. We have carefully considered the submission made by the learned counsel of the appellant and gone through the order of the CIT. The appellant has been consistently following the practice of recording only fully fabricated jewellery in its books of accounts as and when the same is received from outside job workers. The addition made is wholly unwarranted in as much as the appellant does not carry inventory on account of work-in-progress. The CIT apart from making a bald allegation, has

brought nothing on record to substantiate the same. There is not even an iota of evidence on record to suggest payment of job charges outside the books of account. We, therefore, have no hesitation in deleting the addition made on this account. This ground of appeal of the appellant succeeds. 41. Ground of appeal No. 7 relates to the addition of gross profits on alleged sales outside the books. In the assessment year 1997-98, the appellant had declared closing stock of Rs. 3,52,58,921. The CIT in that year worked out the value of closing stock at Rs. 3,03,62,794 and made an addition of Rs. 48,94,127 as alleged undisclosed investment. 41. Ground of appeal No. 7 relates to the addition of gross profits on alleged sales outside the books. In the assessment year 1997-98, the appellant had declared closing stock of Rs. 3,52,58,921. The CIT in that year worked out the value of closing stock at Rs. 3,03,62,794 and made an addition of Rs. 48,94,127 as alleged undisclosed investment. 42. In the order under section 263 for the relevant assessment year, the CIT has further alleged that the excess stock as worked out in assessment year 1997-98 was sold outside the books during the relevant previous year, resulting in gross profit @ 20 per cent amounting to Rs. 9,79,225. 42. In the order under section 263 for the relevant assessment year, the CIT has further alleged that the excess stock as worked out in assessment year 1997-98 was sold outside the books during the relevant previous year, resulting in gross profit @ 20 per cent amounting to Rs. 9,79,225. 43. Challenging the aforesaid addition, Shri Ajay Vohra contended that the said addition is based purely on conjectures and surmises and is not backed by any evidence on record. It was further contended that in the assessment year 1997-98 all that the CIT had done was to arrive at a value different than that declared by the appellant without pointing out any discrepancy in the quantity of stock. That being so, there could not have been any sale outside books of account as, alleged by the CIT, during the relevant previous year. Further, it was argued that the CIT in making the addition for assessment year 1997-98 has treated the excess stock declared by the assessed, as unexplained investment. It was not the case of the CIT that the appellant had stock outside the books of account. Therefore, under such circumstances, addition made by the CIT on account of alleged sale outside books of account is contrary to his finding in the assessment year 1997-98. 43. Challenging the aforesaid addition, Shri Ajay Vohra contended that the said addition is based purely on conjectures and surmises and is not backed by any evidence on record. It was further contended that in the assessment year 1997-98 all that the CIT had done was to arrive at a value different than that declared by the appellant without pointing out any discrepancy in the quantity of stock. That being so, there could not have been any sale outside books of account as, alleged by the CIT, during the relevant previous year. Further, it was argued that the CIT in making the addition for assessment year 1997-98 has treated the excess stock declared by the assessed, as unexplained investment. It was not the case of the CIT that the appellant had stock outside the books of account. Therefore, under such circumstances, addition made by the CIT on account of alleged sale outside books of account is contrary to his finding in the assessment year 1997-98. 44. The learned departmental Representative relied upon the CIT's order. 44. The learned de-

partmental Representative relied upon the CIT's order. 45. Having heard both the sides, we find ourselves inclined to agree with the submissions of the appellant. We have in assessment year 1997-98 deleted the addition made. The sale of stock held in assessment year 1997-98 has been duly recorded in the books of account. No instance has been brought to our notice where any stock has been sold outside the books of account. The addition made is, therefore, without any factual foundation and is deleted. It is further true that in assessment year 1997-98, the CIT had only questioned the valuation of the stock. No tity of stock was pointed out in that year. Once discrepancy, as regards the quan the quantity of stock is accepted as having been correctly recorded in the books of account; there cpuld be no allegation of sale of such stock outside the books of account. It requires no extrapolation to understand that once a quantity of stock is accepted as having been correctly recorded, the same could not have been sold outside the books in subsequent years, especially when the quantity of stock in the next year also stands reconciled. On this count alone, the addition made by the CIT calls for being deleted. There is also considerable force in other arguments of the learned counsel for the appellant that it was not the case of the CIT that the stock alleged to be undisclosed investment was not recorded in the books of account for assessment year 1997-98 and the CIT cannot now, hold that the stock has been sold outside the books of account. We, therefore, delete the addition made by the CIT on both the above counts. This ground by the appellant succeeds. 45. Having heard both the sides, we find ourselves inclined to agree with the submissions of the appellant. We have in assessment year 1997-98 deleted the addition made. The sale of stock held in assessment year 1997-98 has been duly recorded in the books of account. No instance has been brought to our notice where any stock has been sold outside the books of account. The addition made is, therefore, without any factual foundation and is deleted. It is further true that in assessment year 1997-98, the CIT had only questioned the valuation of the stock. No tity of stock was pointed out in that year. Once discrepancy, as regards the quan the quantity of stock is accepted as having been correctly recorded in the books of account; there cpuld be no allegation of sale of such stock outside the books of account. It requires no extrapolation to understand that once a quantity of stock is accepted as having been correctly recorded, the same could not have been sold outside the books in subsequent years, especially when the quantity of stock in the next year also stands reconciled. On this count alone, the addition made by the CIT calls for being deleted. There is also considerable force in other arguments of the learned counsel for the appellant that it was not the case of the CIT that the stock alleged to be undisclosed investment was not recorded in the books of account for assessment year 1997-98 and the CIT cannot now, hold that the stock has been sold outside the books of account. We, therefore, delete the addition made by the CIT on both the above counts. This ground by the appellant succeeds. 46. In grounds of appeal No. 8 and 9-9.3 the assessed challenges the computation of deduction under section 80HHQ, arrived at by the CIT. The learned counsel for the assessed submitted that the CIT in his order under section 263 of the Act has varied from the deduction originally claimed by the assessed on account

of the following 46. In grounds of appeal No. 8 and 9-9.3 the assessed challenges the computation of deduction under section 80HHQ, arrived at by the CIT. The learned counsel for the assessed submitted that the CIT in his order under section 263 of the Act has varied from the deduction originally claimed by the assessed on account of the following (a) reduced 90 per cent of the interest received on FDRs placed with the Banks as margin money from the profits of the business, (b) treated alleged sales of illusory opening stock of Rs. 58,75,352 (Rs. 48,94,127 (being illusory opening stock) + 20 per cent of Rs. 48,94,127 (being gross profits) outside the books of account as part of total turnover, (c) treated alleged sales of silver and precious stones outside the books of account amounting to Rs. 88,26,126 as part of total turnover, and (d) without prejudice, in not enhancing the profits of the business by the sum of Rs. 88,26,126 alleged to be sales made outside the books, consistent with the finding recorded by the CIT. 47. As, regards (a) above, the learned authorised representative reiterated, the submissions made on the issue in the assessment year 1997-98. The learned departmental Representative too raised similar counter arguments as in the preceding year. 47. As, regards (a) above, the learned authorised representative reiterated, the submissions made on the issue in the assessment year 1997-98. The learned departmental Representative too raised similar counter arguments as in the preceding year. 48. Having heard both the parties we find that the issue is similar on facts to the issue involved in the immediately preceding year. We have in our order for assessment year 1997-98, discussed the issue at length and concluded that the issue being debatable, the CIT could not have assumed jurisdiction under section 263 of the Act as held by the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. v. CIT* (2000) 159 CTR (SC) 1 : (2000) 243 ITR 83 (SC). The facts in the present case being identical, we find no occasion to take a view different from that in asst. yr 1997-98. We, therefore, hold that the order of the CIT on the issue is bad in law, being beyond jurisdiction. 48. Having heard both the parties we find that the issue is similar on facts to the issue involved in the immediately preceding year. We have in our order for assessment year 1997-98, discussed the issue at length and concluded that the issue being debatable, the CIT could not have assumed jurisdiction under section 263 of the Act as held by the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. v. CIT* (2000) 159 CTR (SC) 1 : (2000) 243 ITR 83 (SC). The facts in the present case being identical, we find no occasion to take a view different from that in asst. yr 1997-98. We, therefore, hold that the order of the CIT on the issue is bad in law, being beyond jurisdiction. 49. As regards (b) above, we have already in our order for assessment year 1997-98 deleted the addition made by the CIT on account of alleged, sales outside books of excess stock (for which addition was made by the CIT in asst. yr. 1997-98). In that view of the matter, we hold that the CIT was not justified in enhancing the total turnover, by Rs. 58,75,352. 49. As regards (b) above, we have already in our order for assessment year 1997-98 deleted the addition made by the CIT on account of alleged, sales outside books of excess stock (for which addition was made by the CIT in asst. yr. 1997-98). In that view of the matter, we hold that the CIT was not justified in enhancing the total turnover, by Rs. 58,75,352.

50. In ground of appeal No. 5 we have already deleted the addition made by the CIT on account of the alleged sale of silver outside the books of accounts. Therefore, the enhancement of turnover on this ground does not survive. 50. In ground of appeal No. 5 we have already deleted the addition made by the CIT on account of the alleged sale of silver outside the books of accounts. Therefore, the enhancement of turnover on this ground does not survive. 51. Ground of appeal No. 10 challenges the action of the CIT in initiating the penalty proceeding under section 271(1)(c) of the Act. We find that the issue is covered by our decision in appellant's own case for assessment year 1997-98. In that year we have cancelled the direction issued by the CIT. For the same reasons we cancel the directions given by the CIT for initiation of penalty under section 2710)(c). 51. Ground of appeal No. 10 challenges the action of the CIT in initiating the penalty proceeding under section 271(1)(c) of the Act. We find that the issue is covered by our decision in appellant's own case for assessment year 1997-98. In that year we have cancelled the direction issued by the CIT. For the same reasons we cancel the directions given by the CIT for initiation of penalty under section 2710)(c). 52. Ground of appeal No. 11 relates to levy of interest under sections 234A, 234B and 234C of the Act. The learned counsel for the appellant prayed for consequential relief. We have no hesitation in accepting the prayer and in directing that the consequential relief be granted to the appellant. 52. Ground of appeal No. 11 relates to levy of interest under sections 234A, 234B and 234C of the Act. The learned counsel for the appellant prayed for consequential relief. We have no hesitation in accepting the prayer and in directing that the consequential relief be granted to the appellant. 53. assessed's appeal stands allowed accordingly. 53. assessed's appeal stands allowed accordingly.