

Income Tax Appellate Tribunal - Jaipur

Income Tax Officer, Jaipur vs Motisons Jewellers Ltdl, Jaipur on 29 September, 2022

vk;dj vihyh; vf/kdj.k] t;iqj U;k;ihB] t;iqj

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

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BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

vk;dj vihy la-@ITA. No. 161/JP/2022

fu/kZkj.k o"kZ@Assessment Years : 2017-18

ACIT, Central Circle-  
2, Jaipur

cuke M/s Motisons Jewellers Ltd.  
Vs. 270 to 272 & 276, Johari Bazar,  
Jaipur-302003.

LFkk;h ys[kk la-@thvkbZvkj la-@PAN/GIR No.: AAHCM 1827 H  
vihyFkhZ@Appellant izR;FkhZ@Respondent

vk;dj vihy la-@ITA. No. 178/JP/2022

fu/kZkj.k o"kZ@Assessment Years : 2017-18

M/s Motisons Jewellers Ltd.

cuke

Asst. Commissioner

of

270 to 272 & 276, Johari Bazar,

Vs.

Income Tax,  
Central Circle-2,  
Jaipur.

LFkk;h ys[kk la-@thvkbZvkj la-@PAN/GIR No.: AAHCM 1827 H

vihyFkhZ@Appellant

izR;FkhZ@Respondent

fu/kZkfjrh dh vksj ls@ Assessee by : Shri Vijay Goyal (C.A.)

jktLo dh vksj ls@ Revenue by : Shri Sanjay Dhariwal (CIT)

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lquokbZ dh rkjh[k@ Date of Hearing 08/09/2022

mn?kks"k.kk dh rkjh[k@Date of Pronouncement : 29/09/2022

vkns'k@ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are the cross appeals filed by the Revenue and the

assessee directed against the order of learned Commissioner of

Income tax (Appeals)-4, Jaipur [hereinafter referred to as 'CIT(A)']

2

ITA No. 161 &178/JP/2022

Motisons Jewellers Ltd.

dated 04.02.2022 for A.Y. 2017-18 which in turn arise from the

order dated 29.12.2019 passed u/s. 143(3) of the Act by the ACIT,

Central Circle-2, Jaipur.

2. As the issues involved in the present appeals are common and inextricably interlinked or in fact interwoven and of the same assessee. Therefore, the parties argued them together and are disposed off by this common order.

3. First, we take up revenue's appeal in ITA No. 161/JP/2022 for the A.Y. 2017-18. The revenue has marched this appeal on following grounds of appeal:-

"1. Whether on the facts and in the circumstances of the case the ld. CIT(A) was justified in deleting the addition of Rs. 12,17,48,500/- by treating the same as part of turnover whereas the same was found to be bogus and false entries or undisclosed income of the assessee which was induced in the books under the garb of cash sales and advance from customer and receipt from debtors, deleting the addition of Rs. 12,17,48,500/- made u/s 68 of the IT Act, 1961 which was deposited by the assessee during the demonetization period and which was also

3

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

remained unverified during the assessment proceedings. Deleting the addition of Rs. 12,17,48,500/- and treating the same as part of turnover and apply NP rate of 2.59% on the whole transaction including the sham transaction of Rs. 12,17,48,500/-, deleting the addition of Rs. 12,17,48,500/-, deposited during the period of demonetization, and spoil the sole purpose of curbing out black money under tax bracket."

4. Brief facts of the case are that the assessee company e-filed its return of income for the previous year 2016-17 relevant to Assessment Year 2017-18 on 31.10.2017 declaring an income of Rs. 4,37,53,418/-. The case of the assessee was taken up for complete scrutiny u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') on the basis of computer assisted selection for scrutiny (CASS) and statutory notice u/s 143(2) of the Act, dated 09.08.2018 was issued. Information u/s 142(1) of the Act was called for vide questionnaire through ITBA. In compliance of the said notices, the assessee submitted details/information through e-proceedings. The ld. AO has examined the details so filed by the assessee. The assessee company is engaged in the business of Jewellery.

4

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

5. During the course of assessment proceedings, it was noticed that the assessee has deposited cash aggregating to Rs. 12,17,48,500/- in the bank account of assessee having no. 911020053773688 and account no. 916030041790950 held in the Axis Bank during the demonetization period i.e. between 09.11.2016 to 31.12.2016. The cash so deposited was of the Specified Bank Notes [ here in after referred as "SBNs" ]

6. In order to verify the source of cash deposit assessee was asked to explain the source along with documentary evidence, assessee was also asked to furnish various details and comparison of cash sales and cash deposit of preceding two

years. In response the assessee furnished various details and documents from time to time. The details, documents and explanation so furnished by the assessee were perused the ld. AO and has observed that :

- a) On Perusal of the submission it is found that, on a single day assessee made cash sales aggregating to Rs. 9,79,23,724/- through more than 725 invoices. The cash sales of Rs. 9,79,23,724/- on single day does not seems genuine following the past year's trends.
- b) When the cash of corresponding months of previous years are compared, it was noticed that the cash sale during the month of October 2016 was Rs. 18,81,89,611/-, during October 2015 it stood at Rs. 11,66,19,434/- and October 2014 at Rs. 17,60,14,563/-.

5

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

Therefore, during the year under consideration cash sales during October month increased by 1.61 times compared to October 2015 and increased 1.07 times compared to October 2014.

- c) The case sales made during October 2016 was 18% and November 2016 was 13% out of total cash sales made during the financial year 2016-17. The cash sales made in two months is higher compared to cash sales made in remaining 10 months of that year. Further when the trend of cash sales is compared to previous years it was noticed that in October 2015 cash sales was just 11% of the total sales and in October 2014 it was 13% compared to total sales.
- d) Further, Assessee failed to furnished the details of the persons such as full name, address and PAN to whom cash sale was made during the demonetization period.
- e) Further, it is found that the assessee has revised its quarterly VAT return for the AY 2017-18 wherein the turnover of the assessee has been significantly increased which is tabulated as under:

Quarter	Original VAT return	Revised VAT return
1st	15047440	300269589
2nd	10653316	260005971
3rd	376741818	991231791
4th	41629068	---

The revision of the VAT return related to the pre demonetization period further strengthen the fact that the assessee company has booked bogus cash sale for the period before demonetization which subsequently increase the sale of the assessee and to show the sale as genuine the assessee revised its VAT return for First 3 quarters. The assessee also revised the VAT return of 4 quarter

however the turnover was not disturbed which shows that the assessee has revised the Return to duped the Department. The whole excise made by the assessee indicate that the assessee has been indulged in booking of bogus cash sales.

- f) The assessee has shown purchase from various concerns during the period before demonetization. To verify the genuineness of the purchase an enquiry was conducted u/s 133(6) of the Act and notice were issued on test check basis which includes entity Shri Mahesh Soni Prop of M/s Paras Gems & Jewellers from whom the assessee has shown purchase of Rs 110561454/ during month of October and November of the year.

The notice was issued through ITBA as per detail provided by the assessee himself such as PAN: GNMP52050H and address

6

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

as provided by the assessee himself. The same was also sent through speed post. However, the notice so sent to the entity returned back unserved. Further, no reply was either received through ITBA. These fact reveals that the purchase shown from M/s Paras Gems & Jewellers is not genuine and as the entity not found exist at the given address and PAN detail.

- g) The assessee claimed that the cash amount deposited during the period of demonetization includes amount of Rs. 2596480/- realized from debtors just before demonetization between 03-11-2016 to 08-11-2016. The assessee was asked to furnish the detail such as full name, address and PAN no. of such persons. However, no such details were provided by the assessee as such and only contract number and name were provided.

As no details of address was provided. Hence, in these circumstances to verify the genuineness of the debtors telephone calls were made to some of the debtors on test check basis from the landline phone of the office of undersigned having no. 01412227574. In the verification the debtors fails to recognize such purchase from the assessee. The detail of verification is tabulated as under:

Sr No.	Bill No.	Bill Date	Name	Mobile	Due Amt	Remark
1	1287	09.05.2016	Aditya Matur	9314114189	12000	Caller admit that he is employee of the Motisons but not remember about purchase

2	4370	16.08.2016	Ghansh yam Ji 77 Gupta	94147803	1000	Debtor not confirm about purchase
3	7824	28.10.2016	Nirmala Jain	99280772 13	50000	No out of service call done on 15.12.2019 at 5.30PM
4	7834	28.10.2016	Vijay Ji Gokhro 92	94140788 7	57000	No response by debtor call dated ITA No. 161 &178/JP/2022 Motisons Jewellers Ltd.
						15.12.2019 time 5.45 PM
5	8218	04.11.2016	Asmita Ji	99820760 35	10000	No response by debtor call dated 15.12.2019 time 5.47PM
6	8267	05.11.2016	Asha Singh	94140623 55	42413	Debtor not remember that's she has purchased any item

In the above verification genuineness of the cash receipt from debtors not found substantiated which further reveals that the assessee has booked bogus debtor to accommodate his unaccounted income under grab of receipt from debtors.

In view of the above, it is evident that, assessee has fabricated the whole transaction to make it look real, however, when the trends of cash sales and series of transactions are considered, it beyond any shadow of doubt that the whole transaction is fabricated and the assessee has deposited its undisclosed income under the grab of cash sales.

7. Based on these observations the ld. AO issued a show cause notice to the assessee requesting to show cause as to why the cash deposited during the demonetization period amounting to Rs. 12,17,48,500/- should not be considered as undisclosed

income and added back to the total income under section 68 of the Act. Subsequently, another show cause notice was issued on 17.12.2019 stating that the on verification propose randomly

8

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

telephonic calls were and mostly debtors not accepted or not remember about any purchase as discussed and tabulated at page 8 of assessment order ( see g) of para 6 above). The ld. AO also informed that notice u/s. 133(6) in the case of Shri Mahesh Soni, dated 27.11.2019 as returned back, that shows that no business activity running on the address provided that shows purchase from Shri Mahesh Soni was bogus and fake.

8. The assessee filed a detailed submission vide their reply dated 10.12.2019. The ld. AO considered the reply of the assessee but not found it acceptable on the following observations :

- a) The assessee has justified the single day sale of Rs. 9,73,23,724/ on 08.11.2016 stating that the assessee is one of the biggest Jeweller of Rajasthan having three story building at Tonk Road, Two Showrooms (on of which is made with three shops) at Johari bazaar. However, the claim so made is not found convincing as discussed above that in previous years i.e. AY 2015-16 & AY 2016 17 no such sale was shown by the assessee although the assessee was having similar structure of building and man power.
- b) The assessee has further claimed that there was a rush in the shop to purchase the jeweller after the news was published in various newspapers. The claim of the assessee totally misplaced as the Hon'ble Prime Minister declared demonetization at 8:30 PM on 08.11.2016 through electronic media. Further, the SBN currency of 500 and 1000 was legal tender till 12:00 PM of 08-11-2016 and assessee has issued 725 invoices within 3 hours. It while be reasonable to presume that first half an hour would have lapsed to react on such declaration and finding out how to consume SBN note of 500 and 1000.
- c) Further the gold jewellery is not a item which can be purchased within 4 to 5 minutes but it takes several minutes to choose the

9

ITA No. 161 &178/JP/2022

jewellery items at their requirement such as measurement of the gold items and their capacity to pay on such item. Hence it cannot be accepted that people rush to the premises of the assessee and purchase gold jewellery item in a similar way as they purchase vegetables.

- d) The assessee has justified the abnormal sale by correlating with incident with Diwali Festival and marriage ceremonies stating that people were having budget for marriage ceremonies and when demonetization declared they consumed the same. However, same is not acceptable considering the fact that all the sale invoice are below 2 lakhs and it cannot be believe that the person who has budget for the marriage ceremonies will purchase all the items below 2 lakhs.
- e) The argument of the assessee that sale of the jewellery business depends on occasion such as Diwali and Marriages not found convincing considering the fact that the purchase made on these occasion are not a purchase like walking person come to the showroom of the assessee and purchase anything as he has to has purchase which is also evident from the methodology of issuance of invoices wherein no detail such as address, full name has been noted.
- f) Further, the argument of the assessee is contrary itself. As per logic of the assessee when demonetization was declared people rushed to jewellery shop than there should be extra ordinary increase in the sale in the month of November as the date of demonetization dated 08-11-2016 pertains to November. Whereas in actuality the assessee has shown 18% increase in the month of October in compare to sale of November at 13%.
- g) The assessee has claimed that he cannot compelled purchaser to disclosed there name, address and PAN and same is not required as per I.T. Act. The assessee further claimed that he is following same method in previous year also. However, the assessee has not furnished any sale bill for previous years. However, the assessee was requested to furnish the same during the course of assessment proceeding Hence the same is not substantiate by documentary evidences.
- h) The quarterly VAT returns for AY 2017-18 have been revised by the assessee which he explain stating that composition sale were omitted being reported in original return. However, it is surprising that the assessee forgets to report composition sale to the extent to Rs. 28.52 cores, Rs. 26,00 cr Rs. 61.4 cr. in each quarter respectively. However, the aforesaid composition sale comes around 70% to 80% sale of total sale of the assessee. The mistake was not happened once but again and again till demonetization. Further, the assessee has not furnished any challan of composition fees paid as stated in reply.



- i) The assessee has submitted that he tries to obtained contract number of debtor but some time they do not provide and the assessee cannot insist for the same. The claim of the assessee against the prevailing practice of the jewellery business as no jewellery seller sale their product on credit to such persons whose name, address and contact number are not available with him. Further, the argument of the assessee itself contrary to its subsequent submission that the credit sale made to those persons who are known to salesmen and staff persons. Same is also not in accordance with prevailing practice of the jewellery business where the price of jewellery depends on rate of gold on particular date which fluctuates day to day and no businessman will made credit sale to unknown person and incurred loss due to fluctuation in the rate of gold.
- j) In the telephonic verification of the debtors on random base it is found that they denied to recognized any such purchase on credit. The assessee has asked for cross examined of such person. However, same cannot be provided as the assessee has not furnished full name, address and PAN of such persons and summon u/s 131 of the Act can be issued to these persons on the basis of telephone no.
- k) Further in respect of the enquiry conducted u/s 133(6) of the Act in case of one of the purchaser M/s Paras Gems & Jewellery. The assessee has claimed that the letter was issued on a wrong address. The same also not as acceptable since the notice was sent at the address mentioned in PAN so provided by the assessee. Further the notice was issued through ITBA which was also served to the assessee at his registered e-mail: However, no reply to the notice was received. Hence the claim of the assessee does not have any substance, Further, as assessee has claimed bogus purchase is from M/s Paras Gems & Jewellery amounting to Rs. 110561454/- . Therefore, Penalty proceedings u/s 270A of the Act is initiated separately for under reporting of the income and misrepresent of the fact.
- l) Furthermore, in the confirmation so furnished the name of proprietor Shri Mahesh has been duly written as signature authority for Paras Gems & Jewellery whereas the assessee has claimed that he is not known to Shri Mahesh Soni. It is quiet surprising that the assessee has made purchase amounting to Rs. 11.05 crore from a proprietor Shri Mahesh concern but does not known the prop. The fact further strengthen that the purchase shown from M/s Paras Gems & Jeweller it not genuine and only a book entry has been made through bogus purchase bill to increase the stock so that same can be shown as stock in hand to support the sale made during the demonetarization period.

11

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

- m) The assessee has shown advance of Rs. 1186250/- which was deposited during the demonetarization. However, from perusal of the information is found that the advance was received just before the declaration of demonetarization during the period 03-11-2016 to 08-

- 11-2016. Further, it is found that the advanced was adjusted the bill issued after the declaration of demonetization. However, no full detail of such person was furnished and not available for verification.
- n) The claim of the assessee that sale of current year cannot be compare with earlier years also has no substance as a business activities are expended on the basis of result and trend of earlier years. In the case of the assessee a huge cash sale required a comparison with the sale of earlier years to justify whether the sale so claimed is with consistence to the sale of earlier years or the assessee has claimed a bogus claim of the sale to introduce his unaccounted income during the period of demonetization as he could not kept the SBN notes of 500 and 1000.
- o) Further, from perusal of the stock of your gold it is found that Pure Gold opening stock for the month of November, 2016 was 14131 grams and total sale of pure gold during the month was 94381 grams. Total sale during the year was 137353 grams and month of November, 2016 was 94381 grams. In a particular month sale of pure gold was 68.71% of total sale. It is highly surprising that how was assessee predicted that there will be sudden increase in demand of pure gold in that particular month.
- p) Further, it is found that the assessee has shown purchase from M/s. Girdhar Jewellers Private Limited on credit before demonetization period from 19.07.2016 to 15.10.2016 amounting to Rs. 18,83,64,457/-. The huge credit purchase of pure gold is not in accordance with prevailing practice of gold market as no seller would survive in the market by selling huge quantum of gold on credit for 3 to 4 months. Further, from perusal of the purchase bill issued by M/s Girdhar Jewellers Pvt. Ltd. it is noticed that in the said bills in the description part only 'gold ornament' has been written and from such details nature of gold ornament cannot be determined whether it is chain, Neckless or some other item. Further, from the bill it cannot be determined that jewellery item so purchase is 14 krt or 18krt or 22 krt gold item. In these circumstances the said purchase cannot be verified from stock register.
- q) Further, it is found that the cash so deposited in the bank account of assessee having no 911020053773688 and account no. 916030041790950 held in the Axis Bank during the period of demonetization subsequently transferred to Girdhar Associate in significant amount which is sister concern of Girdhar Jeweller Pvt. Ltd. having same address at C-114, Lal Kothi C-Scheme, Jaipur and same director which is further strengthen the fact that no actual purchase was made from Girdhar Jeweller Pvt. Ltd. as purported by

the assessee and only book entry of purported purchase was made to show high stock before demonetization so that bogus sale can be substantiated by such high stock in hand. This fact is also shows that no actual delivery of such stock was received before the demonetization period and not actual stock was sold on the day of demonetization and all the adjustment has been made after the demonetization.

- r) As discussed above, the assessee a purchase from M/s Paras Gems and Jewellery not found extent during the enquiry and genuineness of the purchase could not be established. Therefore, stock register so furnished by the assessee is prepared afterthought and does not disclosed true income of the assessee. Accordingly, same cannot be relied upon and the item shown to be sold in sale bill during the course of demonetization could not be verified and the same are rejected in terms of the provisions of section 145(3) of the Act.

These facts are clearly shown that these sales were fabricated and manipulated. Therefore, these entries are bogus & false and only made for generate cash in hand in books of account for adjustment of cash deposited by assessee during demonetization period. The cash so deposited is nothing but the undisclosed income of the assessee earned from undisclosed sources and shown by the assessee under the grab of cash sales, advance from customer and receipt from debtors by tailoring sales to make an eye wash. Therefore, the undisclosed income of the assessee which he induced in books under the grab of cash sales and advance from customer and receipt from debtors amounting to Rs. 12,17,48,500/-is added unexplained cash credit u/s 68 of Act and resultantly addition of Rs 1247,48,500/6 being made and added to the total taxable income of the assessee and taxed at the rate of 60 % as provision u/s 115BBE.

9. The ld. AO further observed that since in the instant case books of accounts are rejected as discussed above, therefore, keeping in view various jurisprudences holding that part history is the best guiding factor to determine taxable profit in cases where books of accounts are rejected. Accordingly, the average N.P. of the assessee computed in the following manner

13

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

Sr.No.	Assessment year	N.P. declared by the assessee
1	2014-15	1.93%
2	2015-16	2.86%
3	2016-17	2.98%
4	Average NP	2.59%

Therefore, N.P at 2.59% is applied for AY 2017-18 against the declared NP at 2.36%. Further, looking to the fact during AY 2017-

18 assessee has induced his undisclosed income in books under the grab of cash sale, cash advance, receipt from debtor as discussed in above Para, out of the total turnover of Rs. 2,09,09,94,399/- the bogus turnover to the extent of Rs. 12,17,48,500/- is deducted and on balance turnover of Rs. 1,96,92,45,899/- Net profit is recomputed at average NP rate of 2.59% as tabulated above @ 2.59% which computed at Rs. 5,10,03,468/- as against Rs. 5,19,80,398/- declared by the assessee in the return and the same is considered for total income of the assessee. Since, the assessee deposited amount of Rs. 12,17,48,500/- in the demonetized currency which the AO treated the same as unexplained cash credit of the assessee and by

14

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd

applying the provisions of section 68 of the Act the same was added as income of the assessee and the same taxed as per the provisions of section 115BBE of the Act. The assessment of the assessee was completed by ld. AO vide his order dated 29.12.2019 wherein the total income of the assessee was assessed at Rs.16,45,24,988/- as against the return income of Rs. 4,37,53,418/- .

10. Aggrieved by the order of the assessing officer making the assessment based on the above stated fact, the assessee preferred an appeal before the ld. Commissioner of Income Tax, Appeals-4, Jaipur. The appeal filed by the assessee was partly allowed by the ld. CIT(A) and the relevant findings of the ld. CIT(A)

is reiterated here in below:

"(xxvi) In view of the facts of the case, it is evident that the appellant has duly substantiated its claim from the documentary evidences and also with the facts which duly supported with his own previous history and trend. The fact also remains that the amount of cash sales is being reflected in its trading and profit and loss account. Thus the contention of the appellant that assessing the said cash sales as unexplained cash credit u/s 68 means that the impugned sales had been taxed twice, firstly the same was treated as sales and secondly the same was treated as unexplained cash credit/money under section 68 of the Act appears to be correct and therefore this would tantamount to double taxation of income, which is impermissible in law. Accordingly, the action of the AO in holding that the appellant could not substantiate the increase in sales with documentary evidences is not based on correct appreciation of the facts. Therefore, I find that the AO was not justified in making an addition of Rs. 12,17,48,500/- under section 68 of the Act

15

ITA No. 161 & 178/JP/2022  
Motisons Jewellers Ltd.

and consequently the aforesaid addition is directed to be deleted. As regards applying the provisions of section 115BBE of the Act on the additions made u/s 68, it is held that since the addition on account of alleged bogus cash sales has been deleted by me, therefore no separate adjudication is required on this issue raised by Ground of Appeal No. 3 as it will only be academic in nature. Accordingly, the Grounds of Appeal No. 1 to 3 are treated as allowed.

(xxvii) As regards the rejection of books of accounts and estimating the net profit rate on the sales of Rs. 1,96,92,45,899/- raised vide Grounds of Appeal No. 4 to 7, it is observed that the Ld. A/R of the appellant has given point wise reply on the various observations made by the AO in respect of invocation of provision of section 145(3) of the Act as also dealt by me in the above paras. However, in view of the fact that the AO has made telephonic verification from some of the debtors and found that they denied to recognize any such purchase on credit and also the fact that the appellant could not furnish full name, address and PAN of such persons on the basis of which summons u/s 131 could be issued to these parties the sales made to these persons remains unverified. Thus apart from the amount of Rs. 25,96,480/- realized from debtors, further advance of Rs. 11,86,250/- received by the appellant from its customers was also not found verifiable by the AO in absence of complete details. Accordingly, I find that the AO is justified in rejecting the books of accounts of the appellant by invoking the provisions of section 145(3) of the Act. It is also observed that the AO has applied Net Profit rate at 2.59% for the year under consideration as against 2.36% declared by the appellant. However, while applying the aforesaid rate, the AO has treated the amount of Rs. 12,17,48,500/- as bogus turnover and taxed the same u/s 68 of the Act. Since in the above paras, I have held Rs. 12,17,48,500/- to be part of total sales and deleted the addition made by the AO u/s 68 of the Act, accordingly, the Net Profit rate of 2.59% applied by the AO is now directed to be

applied on the total turnover of Rs. 2,09,09,94,399/- (including the amount of Rs. 12,17,48,500/-) declared by the appellant for the year under consideration. The AO has made an addition of Rs. 5,10,03,468/- by applying the Net Profit rate of 2.59% on reduced turnover of Rs. 1,96,92,45,899/-. Consequently, the Net Profit rate by applying 2.59% on total turnover of Rs. 2,09,09,94,399/- is worked out at Rs. 5,41,56,755/-. Accordingly, an addition of Rs. 31,53,287/- (Rs. 5,41,56,755 - Rs. 5,10,03,468) is confirmed and the balance addition of Rs. 4,78,50,181/- is directed to be deleted. Accordingly, the Grounds of Appeal No. 4 to 7 are treated as partly allowed."

16

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

11. Now, after examining the orders of lower authorities as detailed here in above, we come to the appeal filed by the revenue which is solely on the issue of the deletion of addition of Rs. 12,17,48,500/- and considering the same as part of turnover and applying same rate of G.P. @ 2.59 % of cash sales which was added by AO u/s. 68 of the disbelieving the cash sales recorded by the assessee on the day of demonetization.

12. In the appeal of the revenue the ld. DR argued that this is a case of deposit of cash into the bank account of the assessee the specified bank notes [ hereinafter SBNs] for a substantial amount of Rs. 12,17,48,500/-. The assessee is the biggest jeweler of Jaipur. The assessee has claimed that the cash is generated on account of 725 Invoices generated on the day, all below Rupee two lacs to avoid the reporting the specified financial transactions and that too in the evening when the Government of India announce the demonetization of specified currency of Rs. 500 and 1000 notes. The assessee has not submitted the PAN and address of these purchasers of jewellery. The sale is not be considered as genuine based on the detailed findings of the ld.

Assessing Officer, even the sales tax / Value added tax returns of the assessee were revised and assessee has revised their sales and the same has been made after the demonetization date. As detailed in the assessment order that the purchases made by the assessee from Paras Gems and Jewellery the information called under section 133(6) is not confirmed even the same was issued mail address registered with the department and AO has recorded detailed reasoned finding about the genuineness of the purchases from that party. The ld. AO has also recorded his detailed findings on the amount realised from the debtor for an amount of Rs. 25 lacs which is also not found correct based on the findings by the assessing officer by calling the respective parties and they have not confirmed to have made purchases from the assessee. Even the assessee has recorded the purchases on credit before the demonetization from M/s Girdhar Jewellers Pvt. Ltd, on credit before demonetization period from 19.07.2016 to 15.10.2016 amounting Rs 18,83,64,457/-. Based on all these defects noted by the ld. AO, he has rejected the book results of the assessee u/s. 145(3) of the Act and proceeded to considered the cash sales to the extent of Rs. 12,17,48,500/- as unexplained cash credit u/s. 68

of the Act and also proceeded to estimate the profit as per last three-year profit declared by the assessee as arrived at 2.59 % and applied that the same on the remaining part of the sales after

reducing the cash sales added separately which is correct action based on the detailed findings recorded by the ld. Assessing Officer and based on these reasoning he supported the order of the assessing officer and submitted that the AO is justified in rejecting the book result of the assessee and the considering the detailed defects noted the ld. DR submitted that cash sales shown by the assessee on the day of the demonetization nothing but the unaccounted money of the assessee routed as cash sales and the addition of deposit of SBN in to the bank account should be sustained and the findings of the ld. CIT(A) is required to be reversed to that extent. The ld. DR has relied upon the following judicial pronouncements to drive home to their various contentions raised as to the onus of the assessee to prove the correctness of the sales reflected by the assessee :

Sr No.	Description of the case law relied upon
1	[ 1963] 49 ITR 112 (SC) Sreelekha Banerjee Vs. CIT
2	[2012] 25 taxmann.com 552 (SC) Zaveri Diamonds Vs. CIT 19 ITA No. 161 &178/JP/2022 Motisons Jewellers Ltd.
3	[2016] 69 taxmann.com 219 (SC) Sudhir Kumar Sharma (HUF) Vs. CIT
4	[2020] 118 taxmann.com 166 (Delhi) Ravinder Kumar Vs. ITO
5	[ 2013] 36 taxmann.com 513 (Delhi) Commissioner of Income Tax Vs. Ajay Kapoor

13. Per contra, the ld. AR of the assessee filed a detailed written submission and case law compilation to drive home to their contention in respect of the appeal filed by the revenue and in respect of the appeal filed by the assessee. The written



submission of the assessee is extracted here in below :

"1). Brief facts of the case:-

a) The assessee is a limited company and deriving income from manufacturing and trading of Jewellery. The assessee's books of account are audited by Chartered Accountant. The copy of audit report and audited statement of Profit and Loss and Balance sheet is at PB 4-42. The assessee filed its return of total income in 31.10.2017 at total income of Rs.4,37,53,420/-. Copy of acknowledgment of Income Tax return and Computation of Total Income is at PB page 1-3.

b) The case of the assessee was taken up for complete scrutiny u/s 143(3) of the Income Tax Act, 1961 on the basis of computer assisted selection for scrutiny (CASS). During the course of assessment proceeding the details/information/documents were called from time to time, which were submitted.

The assessment of the assessee was completed by ld. AO vide his order dated 29.12.2019 wherein the total income of the assessee was assessed at Rs.16,45,24,988/- as against the return income of Rs. 4,37,53,418/-. In the assessment order the ld. AO made the following additions/disallowances: -

i) The ld. AO rejected the books of the accounts of the assessee by applying the provisions of section 145(3) of the Act. After rejecting the books of accounts of the assessee the ld. AO estimated the net profit rate of assessee 2.59%, being average NP of last three years and applied the same on the sales of Rs. 1,96,92,45,899/- (Rs. 209,09,94,399/- (Sales as per Books) - 12,17,48,500/- (cash deposited in bank) computed by the ld. AO at his own. The ld. AO reduced the amount of Rs. 12,17,48,500/- deposited in the demonetized currency,

20

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

which was against sales, realization from debtors and advance against sales, out of total sales of Rs. 2,09,09,94,399/- declared by the assessee. Thus the ld. AO computed the net profit of the assessee Rs. 5,10,03,468/- as against Rs. 5,19,80,398/- declared by the assessee.

ii) Further the assessee deposited amount of Rs. 12,17,48,500/- in the demonetized currency which was out of cash balance available with the assessee from sales made by it, amount realized from sundry debtors and advance received against sales. The ld. AO treated the same as unexplained cash credit of the assessee and by applying the provisions of section 68 of the Act the same was added as income of the assessee and the same taxed as per the provisions of section 115BBE of the Act.

2). Aggrieved from the assessment order, the assessee filed appeal before ld. CIT(A). The ld CIT(A) after analysing each facts and various judgments made detailed factual finding in para 6.2 at page 45 to 57 of her order and partly deleted the addition made by ld. AO. The findings of ld CIT (A) in brief are as under: -

i) deleted the addition of Rs. 12,17,48,500/- made by ld. AO under section 68 of the Act alleging the cash deposited in bank a/c in demonetized currency as unexplained cash credit.

- ii) Upheld the rejection of books of accounts and also upheld the estimation of NP rate of 2.59% as against NP rate of 2.36% declared by the assessee.
- iii) Initially in the original order dated 04.02.2022 the ld. CIT (A) confirmed the addition of Rs. 31,53,287/-, which by passing the rectification/corrigendum order dated 11.07.2022 modified and sustained Rs. 47,72,297/- by estimating the net profit of Rs. 5,41,56,755/- (by applying the NP rate 2.59% on declared turnover of Rs. 2,09,09,94,399/-) as against Net profit of Rs. 4,93,84,458/- declared by the assessee.
- 3). Aggrieved from the order of ld. CIT(A), the department and assessee both are in appeal. The appeal of the department is listed at ITA No. 161/JPR/2022 and the appeal of the assessee is listed at ITA No. 178/JPR/2022.

3.1 The grounds in appeal raised by the revenue are as under: -

1. "Whether on the facts and in the circumstances of the case the ld. CIT (A) was justified in deleting the addition of Rs. 12,17,48,500/- by treating the same as part of turnover whereas the same was found to be bogus and false entries or undisclosed income of the assessee which was induced in the books under the grab of cash sales and advance from customer and receipt from debtors, deleting the addition of Rs. 12,17,48,500/- made u/s 68 of the I. T. Act, 1961 which was deposited by the assessee during the demonetization period and

21

ITA No. 161 & 178/JP/2022  
Motisons Jewellers Ltd.

which was also remained unverified during the assessment proceedings, deleting the addition of Rs. 12,17,48,500/- as treating the same as part of turnover and apply NP rate of 2.59% on the whole transaction including the sham transaction of Rs. 12,17,48,500/-, deleting the addition of Rs. 12,17,48,500/- deposited during the period of demonetization, and spoil the sole purpose of curbing our black money under tax bracket."

3.2 The grounds in appeal raised by the assessee, as per modified form-36 filed on 28.07.2022, are as under: -

"1. On the facts and under the circumstances of the case and in law the ld. AO erred in rejecting the books of account of the Appellant by invoking the provision of section 145(3) of the Income Tax Act, 1961 and CIT (A) further erred in sustaining the rejection of books of accounts for the sole reason that amount received from debtors and advance from customers, which deposited into bank in demonetized currency, was not found verifiable.

2. On the facts and the circumstances of the case and in law the ld. CIT (A) erred in estimating the net profit of Appellant Rs. 5,41,56,755/- by applying the net profit rate @ 2.59% on

declared turnover of Rs 2,09,09,94,399/- and thereby confirming the addition of Rs. 47,72,297/-

3. The Appellant prays for leave to Add, to amend, to delete, to modify the all or any grounds of appeal on or before the hearing of appeal."

#### Departmental Appeal

#### 4). Submission on Grounds of Appeal raised by department

The sole ground raised by department is regarding to the deletion of addition of Rs. 12,17,48,500/- made by ld. A0 by applying the provisions of section 68 and taxed as per provisions of section 115BBE of the Act.

#### 4.1. Finding of ld.A0: -

The findings and observations of ld. A0 are at page 2 to 23 of the assessment order. In view of the observations and findings the ld. A0 alleged that the sales made, amount realized from debtors and advances received from customers, which was utilized to deposit in

22

ITA No. 161 &178/JP/2022

Motisons Jewellers Ltd.

bank account in demonetized currency after post demonetization were fabricated and manipulated. These entries are bogus & false and only made to generate cash in hand in books of account for adjustment of cash deposited by assessee during demonetization period which is nothing but the undisclosed income of the assessee earned from undisclosed sources and shown by the assessee under the grab of cash sales, advance from customer and receipt from debtors by tailoring sales to make an eye wash. Therefore, the undisclosed income of the assessee which it induced in books under the grab of cash sales and advance from customer and receipt from debtors amounting to Rs. 12,17,48,500/- was added in total income of the assessee treating the same as unexplained cash credit u/s 68 of Act.

#### 4.2 Finding of ld. CIT(A): -

The findings of ld. CIT(A) is in para 6.2 at page 45-57 of her order. The ld. CIT(A) after analysing each fact and various judgments made detailed factual finding in her order and deleted the addition of Rs. 12,17,48,500/- made by ld. A0 u/s 68 of I.Tax Act.

#### 4.3 Submission of assessee: -

#### 4.3.1The assessee relies upon the findings made by ld CIT(A).

The findings of ld CIT(A)is in para 6.2 (i to xxvi)at page 45-56 of her order. The ld. CIT(A)after analysing each fact and various judgments

made detailed factual finding in her order and deleted the addition made by ld. AO. The assessee relies the findings of ld. CIT(A).

4.3.2 The source of cash, which deposited in demonetized currency, was duly explained

1) During the year under consideration the assessee, deposited Rs. 12,17,48,500/- in demonetized currency. The cash so deposited by the assessee was accumulated cash which was received against cash sales, realized from debtors and advance received from customers during the period from 03.11.2016 to 08.11.2016.

2) The summary of cash book of the assessee for the period from 03.11.2016 to 08.11.2016 is as under: -

Particulars	Amount (In Rs.)
Opening Balance as on 03.11.2016	3,96,75,854
Add: - Sales made during 03.11.2016 to 08.11.2016	11,98,09,806
Add: - Amount realized from debtors from 03.11.2016 to 08.11.2016	25,96,480
23	ITA No. 161 &178/JP/2022 Motisons Jewellers Ltd.

Add: - Amount received as advance from customers during 03.11.2016 to 08.11.2016 11,86,250  
 Less: - Cash Deposited in bank during 03.11.2016 to 08.11.2016 (i.e.before demonetization) 4,11,00,000  
 Less: - Cash Expenses/payments during 03.11.2016 to 08.11.2016 70,000  
 Closing Balance as on 08.11.2016 12,20,98,390  
 Out of closing cash balance as on 08.11.2016 the amount of Rs. 3,49,890/- was in non-demonetized currency i.e.notes of 50, 100 etc. and the amount of Rs. 12,17,48,500/- was in demonetized currency.

3) The date wise detail of amount of Rs. 12,17,48,500/- deposited in demonetization currency is as under: -

Date of deposit	Amount deposited	Name and Address of Bank
10.11.2016	7,20,00,000	Axis Bank Ltd., Apex Tower, Lal Kothi, Tonk Road, Jaipur A/c No. 916030041790950
10.11.2016	4,80,00,000	Axis Bank Ltd., Apex Tower, Lal Kothi, Tonk Road, Jaipur A/c No. 911020053773688
06.12.2016	17,48,500	Axis Bank Ltd., Apex Tower, Lal Kothi, Tonk Road, Jaipur A/c No. 916030041790950

Thus, out of total cash Rs. 12,17,48,500/- deposited in bank in

demonetized currency, Rs. 12,00,00,000/- deposited on the first working day of banks after the announcement of demonetization i.e. on 10.11.2016 and balance left out meagre amount, which could not be deposited on 10.11.2016 was deposited on 06.12.2016.

4) The cash was deposited in bank account of out of the cash sales, advance received from customers against sale and recovery from outstanding debtors during the period 03-11-2016 to 08-11-2016. The date wise cash receipt to the assessee from each source is as under: -

Date	Amount Rs.	Source
03-11-2016	38,43,550	i) Advance from customers Rs. 1,75,000/- ii) Realization from old debtors Rs. 2,74,400/- iii) Cash sales Rs. 33,94,150/-
	24	ITA No. 161 &178/JP/2022 Motisons Jewellers Ltd.
04-11-2016	49,75,765	i) Advance from customers Rs. 84,650/- ii) Realization from old debtors Rs. 7,13,000/- iii) Cash sales Rs. 41,78,115/-
05-11-2016	49,39,044	i) Advance from customers Rs. 1,75,000/- ii) Realization from old debtors Rs. 3,22,200/- iii) Cash sales Rs. 44,41,844/-
06-11-2016	38,52,125	i) Advance from customers Rs. 3,95,500/- ii) Cash sales Rs. 34,56,625/-
07-11-2016	57,75,362	i) Advance from customers Rs. 93,000/- ii) Realization from old debtors Rs. 4,29,800/- iii) Cash sales Rs. 52,52,562/-
08-11-2016	9,83,62,654	i) Advance from customers Rs. 2,62,600/- ii) Realization from old debtors Rs. 7,76,330/- iii) Cash sales Rs. 9,73,23,724/-

4.3.3 Relevant documents were submitted to substantiate the source of cash in hand as on 08.11.2016

During the course of assessment proceedings, the assessee submitted the following documents to substantiate its claim: -

1) Bill wise detail in respect of cash sale and receipt No. wise detail in case cash received from parties during the period from 03.11.2016 to 08.11.2016 were submitted along with submission dated 11.03.2019 (Copy of the same is at PB Page 148 to 160). Copies of sales bills for

the period from 29.10.2016 to 08.11.2016 submitted along with submission dated 15.10.2019 (The copy of submission dated 15.10.2019 is at PB Page 75 to 79). The sales bills for the complete year were submitted in the office of AO.

2) Monthly summary of stock register were submitted along with submission dated 11.03.2019 (Copy of the same is at PB Page 166 to 177). Day to day stock register submitted along with submission dated 15.10.2019 (The of the same is at PB Page 178 to 183).

3) Copy of sales ledger from the books of accounts of assessee for the period from September-2016 to December-2016 were submitted

25

ITA No. 161 & 178/JP/2022  
Motisons Jewellers Ltd.

along with submission dated 11.03.2019 (The copy of submission dated 11.03.2019 is at PB Page 63 to 71).

4) Copy of cash book for the financial year 2016-17 was submitted along with submission dated 11.03.2019 (The copy of submission dated 11.03.2019 is at PB Page 63 to 71).

5) Detail of debtors from whom cash was received prior to the demonization and utilized to deposited in bank after demonetization as submitted along with letter dated 14.08.2019 & 15.10.2019 (Copy of the same is at PB Page 161 to 162) and also submitted (corrected) along with letter dated 21.12.2019 (Copy of the same is at PB Page 163 to 165).

6) Copies of VAT quarterly returns (Original) submitted along with letter dated 21.12.2019 (Copy of the same is at PB Page 97 to 109) and revised return submitted along with letter dated 11.03.2019 (Copy of the same is at PB Page 110 to 138).

7) Copy of assessment order of VAT and CST submitted along with letter dated 12.12.2019 (Copy of the same is at PB Page 139 to 147).

In view of above documents, the assessee duly substantiated its claim.  
4.3.4 Facts duly supported with the own previous history and trend of the assessee.

The various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number 03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017 - ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II which gives guidelines that what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing cases of cash deposited in demonetized currency. Such instructions speak about the comparative analysis of cash deposits,

cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of accounts have been rejected or not where substantial evidences of wide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money. The instruction dated 21/02/2017 that the assessing officer basic relevant information

26

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

e.g.monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash and is or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash else or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year.It also suggested that abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Therefore, it is important to examine whether the case of the assessee falls into these parameters are not.

The assessee is engaged in the business of Jewellery and one of the biggest Jeweller of the Jaipur city. The retail selling counters of the assessee is in three story building at Tonk Road, Two showrooms (one of which is made with three shops) at Johari Bazar. In the trade of the assessee many of the customers usually pay in cash and as such, the assessee normally has sufficient cash balance throughout the year. The cash received against such cash sales is subsequently deposited into the banks from time to time as per the convenience of the assessee. The huge cash balance is regular feature of the assessee and the same is apparent from the summary of the cash balance at the end of each month submitted to ld. A0 in submission dated 15.10.2019 (Copy of such submission is at PB Page 75 to 79). Such summary is as under: -

a) Comparison of month wise Cash in hand in last four years:-

Months	F.Y. 2014-15	F.Y. 2015-16	F.Y. 2016-17	F.Y. 2017-18
	Amount of Cash in hand	Amount of Cash in hand	Amount of Cash in hand	Amount of Cash in hand
April	6,96,42,865.00	5,22,71,834.00	97,75,268.26	1,22,93,65
May	8,94,92,944.00	5,94,80,621.00	6,33,50,088.26	3,57,43,69
June	4,73,31,692.00	79,09,530.00	8,54,06,309.26	3,11,81,85
July	5,26,97,000.00	4,61,57,595.00	9,49,12,520.76	2,39,52,61
August	61,95,404.00	5,47,27,012.00	2,17,87,121.20	34,64,38
September	2,12,80,570.00	5,46,49,417.00	39,79,656.16	68,64,11
October	3,39,82,340.00	3,12,90,333.00	3,57,65,036.20	1,98,30,21

November	4,10,44,185.00	2,81,78,828.00	91,85,834.00	3,77,06,75
December	3,14,68,972.00	5,80,74,865.00	54,92,119.00	1,05,75,84
January	7,21,58,597.00	4,19,00,226.00	1,81,26,979.16	5,85,13,19
February	63,45,458.00	4,45,60,529.00	2,82,83,791.26	1,30,23,63
March	3,61,32,491.00	77,53,595.00	2,37,80,394.37	2,25,61,42

27

ITA No. 161 &  
Motisons J

b) Comparison of Cash sales and % to total sales in last three years:-  
The month wise cash sales of the assessee for the three financial years as submitted to ld. AO in submission dated 11.03.2019 (Copy of such submission is at PB Page 63 to 71) is as under: -

Year Month	FY 2014-2015		FY 2015-2016		FY 2016-2017
	Amount of Cash Sales(Rs.)	% to Total Sales	Amount of Cash Sales(Rs.)	% to Total Sales	Amount of Cash Sales
April	11,10,77,321.00	8%	11,08,77,197.00	10%	8,91,40,
May		7%		6%	
	9,04,10,957.00		7,04,67,023.00		6,74,5
June		8%		5%	
	10,95,07,354.00		5,37,90,519.00		8,56,4
July		5%		6%	
	6,55,96,391.00		6,92,05,543.00		7,46,6
August	7,29,82,310.00	5%	7,01,52,608.00	6%	5,95,0
September	12,98,70,856.00	10%	6,06,21,310.00	5%	6,54,9
October	17,60,14,563.00	13%	11,66,19,434.00	11%	18,81,8
November	15,50,86,535.00	12%	19,17,28,186.00	17%	13,55,2
December	8,87,48,722.00	7%	14,34,51,580.00	13%	3,74,7
January	11,73,96,954.00	9%	10,39,43,067.00	9%	6,61,2
February	10,20,73,837.00	8%	10,79,76,964.00	10%	7,87,3
March	12,39,57,357.00	9%	70,70,689.00	1%	7,09,5
Total		100%		100%	
	1,34,27,23,157.00		1,10,59,04,120.00		1,01,89,

Thus, the cash sales & corresponding cash deposits into the bank accounts of the assessee have been a regular feature of the assessee's business since the past several years. The same is clearly borne out from the details of cash sales and cash deposits made by the assessee in the past Financial Years viz. F.Ys 2014-15 & 2015-16 filed before the A.O.

c) Comparison of Cash sales in the month Nov and % to total sales in last three years:-

28

ITA No. 161 &17  
Motisons Jew



Year	FY 2014-2015		FY 2015-2016		FY 2016-2017	
Month	Amount of Cash Sales(Rs.)	% to Total Sales	Amount of Cash Sales(Rs.)	% to Total Sales	Amount of Cash Sales(Rs.)	% to Total Sales
November	15,50,86,535.00	12%	19,17,28,186.00	17%	13,55,23,909.00	13%

In Nov 2014 total cash sales were of Rs. 15.51 crores and in Nov 2015 the cash sales of the assessee were of Rs. 19.17 crores whereas the cash sales in Nov 2016 was of Rs. 13.55 crores, lesser than Nov 2014 and Nov 2015. In term of % of cash sales to total sales, it was 12% of total sales in Nov 2014, and in Nov 2015, it was 17% of total sales of FY 2015-2016, whereas in Nov 2016 it was only 13% of total sales of FY 2016-2017. Therefore, there was not abnormal rise in overall cash sales of the assessee due to demonetisation. The same trend, though some slowdown in next few months, has also continued after the demonetization period i.e. in Dec. 16 to March 2017. The reason of marginally slow down in cash sales in the month of December 2016 to February 2017 in comparison to cash sales during this period in the A.Y 2015-16 and 2016-17 was that due to heavy purchases on 08th November 2016 for the purpose of utilizing the demonetized notes the purchase in the month of December 2016 to February 2017 came down. This implies that the business of the assessee was run with the same feature even after demonetization and there was no unusual trend in the cash sales or cash deposited in the banks during the demonetization period only. The fact that cash sales and cash deposits in banks are regular features of the assessee's business (in the pre demonetization, demonetization and post demonetization period) has not been controverted by the ld. AO and is clearly explicit from the data on record.

d) Comparison of Cash deposited in bank in the month Oct, Nov and Dec in last three years:-

Month	FY 2014-15	FY 2015-16	FY 2016-17
October	16,15,00,000	13,98,00,000	15,47,00,000
November	14,77,00,000	19,29,50,000	16,14,00,000
December	9,80,00,000	11,34,50,000	4,33,00,000
Total in Oct, Nov and Dec	40,72,00,000	44,62,00,000	35,94,00,000

29

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

Thus, the cash deposited by the assessee in the demonetized currency was not an unusual deposit looking the past trend of the assessee which is apparent from the above table. Thus, there was no unusual

trend in depositing cash in banks as a result of demonetization.

#### 4.3.5 Reason and justification of Heavy cash sales as on 08.11.2016

So far as heavy cash sales of Rs. 9,73,23,724/- as on 08.11.2016 i.e. the day on which the demonetization was announced the appellant submits that, with the announcement of the Hon'ble Prime Minister in respect of demonetization of currency notes of denomination Rs. 500/- and Rs. 1000/-, there was frenzy amongst people who wanted to convert their SBN into gold. The jewellery stores had remained opened till midnight on 8th of November 2016, in order to top the high demand from customers. The appellant too had met with the high demand of the customers and had made sales amounting to Rs. 9,73,23,724/- on 08/11/2016 and this cash sales includes the regular sales of 08.11.2015 i.e. sale made prior to announcement of demonetization. Further it was relevant to mention here that there was no overall increase in cash sales of assessee during the month Nov 2016 but the sale of a particular date i.e. 8/11/2016 was increased which shows the shifting of regular cash sales of other dates of Nov 2016 to a particular date 08/11/2016 because there was frenzy amongst the customers who wanted to convert their SBN into Gold. Since the demonetization was ordered to be effective from the mid night of 08.11-2016 i.e. from 12.00 midnight thus accepting SBN upto midnight was not against the law.

The ld. AO has failed to appreciate the abnormal fact and alleged that the amount of cash sales made on 08/11/2016 is asymmetrical and is not comparable with sales made on the other dates of the month of November 2016. The ld. AO failed to appreciate that in Nov 2014 total cash sales were of Rs. 15.51 crores and in Nov 2015 the cash sales of the assessee were of Rs. 19.17 crores whereas the cash sales in Nov 2016 was of Rs. 13.55 crores, lesser than Nov 2014 and Nov 2015. In term of % of cash sales to total sales, it was 12% of total sales in Nov 2014, and in Nov 2015, it was 17% of total sales of FY 2015-2016, whereas in Nov 2016 it was only 13% of total sales of FY 2016-2017. Therefore, there was not abnormal rise in overall cash sales of the assessee due to demonetisation. There was no overall increase in cash sales of assessee during the month Nov 2016 but the sale of a particular date i.e. 8/11/2016 was increased which shows the shifting of regular cash sales of other dates of Nov 2016 to a particular date 08/11/2016 because there was frenzy amongst the customers who

30

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

wanted to convert their SBN into Gold. Demonetization, itself was on historical event which had led to such a high demand of the goods like gold in order to convert the SBN during the intervening period of 8.00 PM (when declaration was made by the Hon'ble (PM) upto the midnight i.e. 12.00 at night of 8th November 2016). It is very well known fact that people had flocked to the shops of jewellers to spend soon to be scrapped currency notes with bags full of cash.

The above contention of the appellant is supported by the news article of "The Economic Times" dated 08-12-2016, wherein the secretary of the India Bullion & Jewellers Association mentioned that the jewellers had sold 15 tonnes of Gold ornaments and bars worth around Rs. 5000 crores on the intervening night of November 8 and 9, 2016 after the government demonetized the Rs. 500 and Rs. 1000 currency notes. (Copy at PB page 268).

The finding given by AO given in the remand report dated 27.12.2021 (copy at Page 4 to 8 of CIT (A) order) is also relevant to mention here, wherein in fourth line of third last para it is mention by ld. AO that "when the demonetization declared i.e. in the month of Nov.-2016, people rushed to Jewellery shop, petrol pumps, medicines shops to buy things with old currency. There was huge increase in sale of jewellery, petrol medicines etc. in the month of November-2016....". Thus, in the remand report ld. AO also accepted that after demonetization the peoples rushed to Jewellery shop.

The sale of ornaments had subsequently for the rest of the month of November and December 2016 had seen a dry spell as the people had purchased jewellery in demonetized currency during the closing hours of 8th November itself not only for the wedding in immediate vicinity but also for weddings and functions in late November or December and also even otherwise for future use. This fact can be seen from the amounts of cash sales of October to December of last three years which is as under: -

Year	FY 2014-2015	FY 2015-2016	FY 2016-2017
Month	Amount of Cash	Amount of Cash	Amount of Cash
	Sales(Rs.)	Sales(Rs.)	Sales(Rs.)
October	17,60,14,563.00	11,66,19,434.00	18,81,89,611.00
November	15,50,86,535.00	19,17,28,186.00	13,55,23,909.00
	31		ITA No. 161 &178/JP/2022
			Motisons Jewellers Ltd.
December	8,87,48,722.00	14,34,51,580.00	3,74,76,942.00
Total	41,98,49,820.00	45,17,99,200.00	36,11,90,462.00

The month of October to December being the festive and wedding season and cash sales of these months are usually higher than other months. From the table above it is apparent that the cash sale of October-2016 to December-2016 was higher than the sales of other months. The major reason for the higher cash sale on 08.11.2016 that

the panic and haste amongst the peoples who intended to off-load the SBN currency, which was acceptable till the midnight of 08.11.2016 by purchasing the gold ornaments.

It is further relevant to mention here that after the Diwali festival, the marriage ceremonies are started. In the FY 2016-17 the Diwali festival was on 30.10.2016 and thereafter the marriage ceremonies started. It is admitted fact that and also customary in India, that each person keep some cushion for purchases of Jewellery at the time of marriage. As soon as the Diwali function ended few days thereafter the demonetization was announced and the persons who were having the planto purchases the Jewellery for marriage etc. and having accumulated funds for that purposes preferred to consume such funds for purchase the Jewellery as on soon the demonetization announced i.e. on 08.11.2016 as thereafter such currency could not be utilized for purchases of Jewellery.

From the above table, it is clear that cash sale made by the assessee during the wedding and festive months of October to Dec was almost same. The combined cash sales of Oct to Dec 2014 were of Rs. 41.98 crores and in Oct to Dec 2015, the combined cash sales were of Rs. 45.18 crores whereas in FY 2016-17, it came down to Rs. 36.11 crores only which is much lesser than combined sales for these months in the year 2014 and 2015. The cash sales of the assessee during the Month Dec 2016 decreased substantially and this fact also proves that the persons planning to buy the Jewellery in later days of 08.11.2016 were also purchased the Jewellery on 08.11.2016 in order to spent there SBN.

Therefore, there cannot be any reason for disbelieving the genuineness of the sales of the assessee merely for the reasons that the same is of abnormal amount and the not commensurate with the past trends more so when the same is duly supported with sale bill and the assessee was having the sufficient stock for that much of sales.

32

ITA No. 161 &178/JP/2022  
Motisons Jewellers Ltd.

4.3.6 Purchases made from M/s Paras Gems & Jewellers and M/s Girdhar Jewellers Pvt Ltd are not genuine:-

- 1) The purchases made from both these parties are genuine and the same is apparent from the following: -
  - i) The purchases are duly supported by the purchase bill and the copy of purchases bills were also submitted to ld. AO during the course of assessment proceedings.
  - ii) The payment of purchases consideration was made through banking channels.
  - iii) The assessee submitted the confirmation of M/s Paras Gems & Jewellers (Copy at PB Page 186)
  - iv) The ld. AO issued the notice u/s 133(6) of the Act to several parties from whom the assessee made the purchases. Girdhar Jewellers Private Limited is one of them and this party

has made compliance to notice and submitted the all requisite documents to ld. AO. The ld. AO did not point out any defects in such documents.

v) The assessment of both these parties was completed by their respective AO (Copy of assessment order's are at PB Page 244 -245 & 246 to 247) and in their assessment their entire sales was treated as genuine.

- 2) The purchase made from M/s Paras Gems & Jewellers was treated as non-genuine because of the sole reason that the notice issued to party u/s 133(6) of Income Tax Act, 1961 and sent through speed post returned back unserved. The notice issued & sent through ITBA (i.e. through online portal of the Income Tax) not complied by the party. On this basis the ld. AO opined that the party does not exist and the purchases made from this party is not-genuine. In this regard we may submit that:

-

i) The notice u/s 133(6) of the Act to Paras Gems & Jewellers (Prop. Mahesh Soni) was sent on the address of party mentioned in his PAN data base. The notice was not issued on the address available on the sale bill supplied by the party to assessee. The assessee made the purchases from M/s Paras Gems and Jewellers having business address: - Plot No. 828- C-5a, JatKeKue Ka Rasta, Chandpole Bazar, Jaipur. Instead of sending the notice on this address or making the inquiries on this address the notice was sent on different address.

ii) It is relevant to mention here that assessment proceeding of this party of the same year was completed by his jurisdictional AO vide order dated 24.12.2019 (Copy at PB Page 244 to 245) and the sales made by this party has been accepted as genuine by the AO of this party, therefore there remains no Motisons Jewellers Ltd.

doubt that the party does not exist and the purchases made from the party is not genuine. It is further relevant to mention here and also apparent from the confirmation of account of this party (Copy at PB Page 186) the assessee also made sales of Rs. 3,40,61,393/- to this party on 23.11.2016, which has been accepted by ld. AO as genuine. Once it is accepted that the sales made to this party is genuine than there remains no reason to treat the purchases made from party as non-genuine. AO is blowing hot and cold in same stream and the dual analogy cannot be applied on the transaction made with the same party.

iii) The reasons for which the notice return back from the address, on which it was send is not mentioned in the assessment order. There may be several reasons of return back of notice such as party was not available at the same time when the service was attempted, party shifted from the address or the delivery person could not locate the address etc. Thus merely for the single reason that the notice issued to the party returned back the purchases cannot be treated as non-genuine. Rameshwar Sirkar -Vs- Income Tax Officer reported in (1973) 88 ITR 374 (Copy at Case Law PB Page No. 1-5) wherein the following views were expressed:-

"The mere fact that the serving officer did not find the assessee to be served with the notice at his address is not sufficient to establish that he could not be found. It must be shown not only that the serving officer went to that place at a reasonable time when the assessee was expected to be present, but also that if he was not found, proper and reasonable attempts had been made to find him either at that address or elsewhere. A notice by affixture without reasonable attempts to find the assessee is not a proper notice."

iv) The assessee has substantiated the purchases by providing the documents such as purchase invoice, confirmation of accounts, payment made through banking channels, VAT No. of the party. The copies of purchases bills of the party and confirmation of account is at PB Page 186 to 191. Thus the initial burden cast on the assessee to prove the genuineness of purchases gets discharged.

It is relevant to mention here that the assessee purchased the goods from this party in the month October & November-2016 and the ld. AO made the verification in the month November or December-2019 i.e. after three years from the date of purchase, therefore after the three years if a party shifted its address or not found on the given address then the assessee cannot be made Motisons Jewellers Ltd.

responsible for that and the purchases cannot be treated as non-genuine solely for this reason. The party duly existed at the time of goods purchased by the assessee and there is no requirement under the law that the buyer of goods should continue to keep track of the seller's whereabouts.

v) It is established position of law that the purchases cannot be treated as non-genuine for the sole reason that the notice returned unserved or party not found. In this regard reliance is placed on the following decisions: -

a) Hon'ble Bombay High Court in the case of CIT vs. Nikunj Exim Enterprises (P) Ltd [2013] 216 Taxman 171 (Bom.), the Hon'ble High Court of Bombay (Copy at Case Law PB Page No. 6-7) held that where sales supported the purchases and payment was made through banks, merely because suppliers had not appeared before AO, the purchase could not be treated as bogus.

b) Gujarat High Court in the case of CIT v. M.K. Bros. (1987) 163 ITR 249 (Guj.) (HC) (Copy at Case Law PB Page No. 8-9) Purchases made by assessee.

Subsequent statements by sellers in Sales Tax proceedings that they had issued bogus vouchers. No evidence that bogus vouchers were issued to assessee. Payments by account payee cheques. Amount represented purchases cannot be disallowed.

c) CIT v Hi Lux Automotive (P.) Ltd. (2009) 23 DTR 385 / 183 Taxman 260 (Del) (HC) (Copy at Case Law PB Page No. 10-14)

d) Rajesh P. Soni v. ACIT (2006) 100 TTJ 892 (Ahd.) (Trib.)(Copy at Case Law PB Page No. 15-18)

e) YFC Projects (P) Ltd. v. DCIT (2010) 46 DTR 496 (Delhi)(Trib.)(Copy at Case Law PB Page No. 19-22)

f) 2018 (12) TMI 1385 - ITAT DELHI ACIT Central Circle-7, New Delhi v/s Karam Chand Rubber Industries Pvt Ltd (Copy at Case Law PB Page No. 23-27)

g) DCIT 25 (3) , 308, C-11, Mumbai Versus Shri Rajeev G. Kalathil- 2014 (8) TMI 807 - ITAT MUMBAI(Copy at Case Law PB Page No. 28-31)

h) ITO vs. Surana Traders 93 TTJ 875 (Mum.)(Copy at Case Law PB Page No. 32-43)

i) ITO vs. Super Chemicals Distributors (2005) 1 SOT 102 (Del.) Held(Copy at Case Law PB Page No. 44-

47)-

Motisons Jewellers Ltd.

j) CIT v/s. Winstral Petrochemicals (P) Ltd. (2010) 41 DTR (Del)139 (Copy at Case Law PB Page No. 48-

52)

k) CIT v/s. Samir Bio-tech (P) Ltd. (2009) 17 DTR (Del)

224. (Copy at Case Law PB Page No. 53-55)

l) 2020 (8) TMI 235 -ITAT Delhi Silburn Papers Pvt Ltd v/s ITO, WARD-23 (4), New Delhi. (Copy at Case Law PB Page No. 56-60 )

m) Hon'ble High Court of Bombay in the case of CIT Vs Nikunj Exim Pvt. Ltd. 2013 TIOL 04. (Copy at Case Law PB Page No. 61)

n) Anis Ahmed and sons V/s CIT (A) and Anr(2008) 297ITR441(SC)(Copy at Case Law PB Page No. 62-

66)

o) ITO v/s Emperor International LtdITA no. 2038 [Delhi] 2009 (Copy at Case Law PB Page No. 67-73)

p) Rohini Builder V/s DCIT(2001) 117 Taxman 25 (Ahd)(Copy at Case Law PB Page No. 74-75)

vi) It is further submitted that in the written submission dated 21.12.2019 it was requested to ld. AO to provide the copy of notice issued by him and the assessee will try to get the same complied by the party. The confirmation of the party was filed before ld AO wherein the party has confirmed the sales made to assessee and payments received against that. However, the copy of notice was not supplied to the assessee as the ld. AO bent to treat such purchases as not genuine. No heed was given on the confirmation of account of the party submitted to ld. AO.

vii) Regarding the other observations/allegations of the ld. AO on this issue which has not been covered in the forgoing paras it is submitted that as stated in last para of page 17 of the assessment order the assessee never said that he did not know to Shri Mahesh Soni. Rather in reply dated 21.12.2019 it was submitted that we have not provided any bill or detail regarding to purchase made from Shri Mahesh Soni and in our books of accounts no purchases has been debited in the name of Shri Mahesh Soni. However, after receiving your notice the assessee has enquired about this matter and came to known that the Shri Mahesh Soni was proprietor of M/s Paras Gems and Jewellers. The assessee made the purchases from M/s Paras Gems and Jewellers, Address: - Plot No. 828-C-5a, JatKeKue Ka Rasta, Chandpole Bazaar, Jaipur. Since all the transaction in the record of the assessee were entered in the name of M/s Paras Gems and Jewellers, therefore on examination of books of accounts and record no one can instantly know that who is Mahesh Soni Motisons Jewellers Ltd.

and the same can only be find out after making the inquiries from the staff who is dealing the purchases and the same happened in the case of assessee also.

So far as regarding to the allegation of ld. AO in the same para of the assessment order that purchases from Paras Gems & Jewellers is only a book entry has been made through bogus purchase bill to increase the stock so that same can be shown as stock in hand to support the sale made during the demonetization period, it is submitted that this finding of ld. AO is perverse and having no legs to stand. In the letter dated 21.12.2019 submitted to ld. AO it was submitted as that : -

Without prejudice to above as we understand your honour is presuming that this alleged bogus purchases was entered by the assessee to create the stock in hand to cover the sales made and deposited in bank in demonetized currency. In this regard we may submit after eliminating the purchases made from this party the assessee still having the sufficient stock to make the sales, therefore there remains no reason for the assessee to make this purchases---."

In the same letter the assessee submitted the stock position of the items purchased from M/s Paras Gems & Jewellers which are Silver Articles 92.5 and Silver Article 97. The stock position was submitted from 07.10.2016 i.e. (the day when first purchase was made from the party) to 08.11.2016 i.e. (the day when demonetization announced). In such summary the assessee submitted the chart including the qty. of goods purchased from this party and excluding the goods purchased from this party. Such chart is as under:-



a) Stock position (from 07.10.2016 to 08.11.2016) by including the goods purchased from Paras Gems & Jewellers in Stock quantity : -

Name of Item		Unit	Opening Stock (+)	Purchase (+)	Mfg(Net) (+)	Sales (-)	C St
Silver 92.5	Article	Gms	5,17,190.53	7,85,800.80	1,49,999.40	3,39,287.80	11,1
Silver Article 97		Gms	44,237.58	2,80,839.29	2,81,301.30	3,10,511.61	2,9
Total		Gms	5,61,428.11	10,66,640.09	4,31,300.70	6,49,799.41	14,0

Motisons Jew

b) Stock position (from 07.10.2016 to 08.11.2016) by excluding the goods purchased from Paras Gems & Jewellers in Stock quantity : -

Name of Item		Unit	Opening Stock (+)	Purchase (+)	Mfg(Net) (+)	Sales (-)	
Silver 92.5	Article	Gms	5,17,190.53	66,475.80	1,49,999.40	3,39,287.80	3
Silver Article 97		Gms	44,237.58	158.80	2,81,301.30	3,10,511.61	
Total		Gms	5,61,428.11	66,634.60	4,31,300.70	6,49,799.41	4

From verification of above mentioned chart your honour will find that even if the quantity embodied in the purchases made from this party is not taken into consideration then still the assessee was having sufficient stock to make the sale. The ld. AO has not considered this vital facts and gave the adverse finding which is for the sole reason that he was bent to make the huge addition in the total income of the assessee.

3) Purchases from Girdhar Jewellers Private Limited The purchase made from M/s Girdhar Jewellers Private Limited was also treated as non-genuine on presumptions and assumptions and for no cogent reason. During the course of assessment proceedings, the ld. AO did not provide any opportunity to assessee to present its case on this footing. Aggrieved from this allegation of learned AO it is submitted as under: -

i) The purchases made from this party in earlier years was held as genuine in 143(3) assessment of the assessee:-The assessee has also made purchases in earlier year from M/s Girdhar Jewellers

Private Ltd as well as M/s Girdhar Associates. The assessment of the assessee for AY 2015-16 and AY 2016-17 was completed u/s 143(3) after detailed scrutiny as the department has carried out search over the assessee on 22-07-2015. The purchases from M/s Girdhar Jewellers Private Ltd as well as M/s Girdhar Associates were accepted as genuine. The purchases by the assessee from both these parties during AY 2015-16 and AY 2016-17 were as under:-

i) AY 2015-16: -

a) GirdharJewellers Private Limited Rs.40,40,65,708/-

b) GirdharAssociates

Rs.6,51,69,466/-

Motisons Jewellers Ltd.

ii) AY 2016-17: -

a) GirdharJewellers Private Limited Rs.23,06,73,484/-

b) Girdhar Associates Rs. 5,69,76,842/-

What the new development had occurred this year to justifiably held the purchases from M/s Girdhar Jewellers Private Ltd as not genuine, the ld AO has not addressed anything on this vital aspect.

ii) During the course of assessment proceedings the ld. AO issued the notice u/s 133(6) of the Act to this party and in compliance to that the party submitted the requisite documents and also confirmed the sales made to the assessee. The ld. AO did not point out any specific defects in such documents.

iii) Assessment proceeding of Girdhar Jewellers Pvt Ltd for the same year was completed by his jurisdictional AO vide order dated 26.12.2019 (Copy at PB Page 246 to 247) and the sales made by this party has been accepted as genuine by the AO of this party, therefore there remains no doubt that the purchases made from the party is not genuine.

iv) It is further relevant to mention here and also apparent from the ledger account of account of this party (Copy at PB Page 192 to

194) the assessee also made purchases of Rs. 13,78,34,488/- from this party during the post demonetisation period from 09.11.2016 to 31.03.2017, which has been treated by ld. AO as genuine. Once it is accepted that the purchase made from this party for the one period is genuine than there remains no reason to treat the purchases made for other period as non-genuine. The ld AO is blowing hot and cold in same stream and the dual analogy cannot be applied on the transaction made with the same party.

v) So far as the findings of ld. AO on the basis of which he opined that the purchases made from this party is not genuine, it is submitted as under: -

a) The purchases made during the period from 19.07.2016 to 15.10.2016, is entirely not made on credit and this fact is against the evidences available on record. From examination of ledger account of this party (Copy at PB Page 192 to 194), your honour will find that the assessee made total purchases of Rs. 18,83,64,857/- from this party during the period from 19.07.2016 to Motisons Jewellers Ltd.

08.11.2016 against which the payment of Rs. 13,27,77,169/- was already made upto 07.11.2016 i.e.prior to demonetization announcement and the balance payment of Rs. 5,55,87,688/- was also made on 10.11.2016 i.e.immediate after one day when the demonetization announced. Thus the finding of ld. AO is patently wrong that the entire purchases of Rs. 18,83,64,857/- was on credit.

b) The credit purchase is matter of understanding in between the buyer and seller and the purchases cannot be treated as non- genuine on this only footing. Still as submitted earlier and at the cost of repetition it is submitted that this is not the case the entire payment of purchase made prior to 08.11.2016, as alleged by ld. AO was outstanding. As submitted earlier para the major payment was already made prior to 08.11.2016 and balance payment on 10.11.2016. As on the date of demonetization announcement i.e.08.11.2016 the payment of Rs. 5,55,87,688/- was only outstanding, majorly of which was for the purchases made after 22.09.2016 i.e.the same remained outstanding for above 1.5 month only,as against 3-4 months alleged by ld. AO and this is the normal credit cycle. It is further relevant to mention here that as on 01.04.2016 the payment of Rs. 8,34,53,390/- was payable to this party, which was majorly paid upto 28.06.2016. The outstanding credit balance as on 31-03-2016 in this party has been accepted by the AO in assessment framed u/s 143(3) for AY 2016-17. It is normal practice of the trade to allow credit purchases to the reputed parties. The outstanding credit balance against the goods supplies were as under:-

Sundry Creditors for goods: -

AY 2015 -16: -	Rs . 25,95,65,700 -
AY 2016 -17: -	Rs . 24,10,17,228/-

The ld AO has accepted these credit purchases and outstanding in the assessment framed u/s 143(3) for the relevant assessment year.

This also shows that the credit purchases for the period from 1 to 3 month is normal feature in the trade of the assessee. Thus the finding of ld. AO on this footing is perverse and should be ignored. On this matter it is further relevant to mention here that it was for the ld. AO, to have brought on record any evidences to disprove the contents of the books of accounts and documents. Failure of the assessee to making immediate payments cannot be grounds for treating the purchases as non-genuine. It could only lead to a suspicion that the purchases could be bogus but nothing more than to it. However, suspicion cannot be the sole ground for treating the purchases as non-genuine.

Motisons Jewellers Ltd.

c) So far as discrepancies noticed by the Id. AO in the purchases bills issued by this party it is submitted that in the segment of gold Jewellery, not studded with diamond & stones, the assessee is dealing only in 22 Krt Gold Jewellery, therefore mentioning of purity in the bills was not much relevant for the assessee. Further, the assessee is duly maintaining the stock register and the purity of the item, purchased is also verifiable from the stock register itself. Otherwise also the purity can also be verified from the rate of the gold prevailing as on the date of purchases. The nature of gold ornaments i.e. chain, necklace etc., mentioning in the bill is not at all relevant because assessee as well as no other Jewellers maintaining the item wise stock register, which is also not practically possible to maintain and the same is always maintain as per the purity of the gold jewellery. Further the purchases made from other parties which comprise the same details in their bills as also the purchases from the same party made after 08.11.2016 is treated as genuine, which shows the biased set of mind of Id. AO for the similar set of transactions and as said earlier that the same for the single reason that the Id. AO was bent for making the huge additions.

d) The amount transferred in account of M/s Girdhar Associates was transferred for purchase made from this party and the same has no bearing with the transactions made with M/s Girdhar Jewellers Pvt Ltd as the transaction carried out with both concerns are separate transactions and both the concerns are different. From the ledger account of M/s Girdhar Associates (Copy at PB Page No. 215 to 216) it is clear that whatever payment made to this party was adjusted against the purchases made from this party only. It is not understandable that if the assessee made the payment Girdhar Associates, who is sister, concern of M/s Girdhar Jewellers Pvt Ltd, than how the purchases made from Girdhar Jewellers Pvt Ltd can be treated as non-genuine.

It is further relevant to mention here that the genuineness of purchases made from Girdhar Associates had not doubted by the Id. AO and the same is treated as genuine. Therefore, it is not correct on part of Id. AO to treat some payments made to Girdhar Associates for such purchases as non-genuine by linking the same from other transactions of other concern and giving totally irrelevant findings.

e) So far as regarding to the allegation of Id. AO in the second last para at page 21 of the assessment order that "---no actual purchase was made from Girdhar Jeweller Private Ltd. as purported by the assessee and only book entry of purported purchase was made to show high stock before demonetization so that bogus sale can be substantiated by such high stock in hand.

Motisons Jewellers Ltd.

This fact is also shows that no actual delivery of such stock was received before the demonetization period and not actual stock was sold on the day of demonetization and all the adjustment has been made after the demonetization."Though in view of our submission in forgoing paras the purchases made from the party is completely genuine and this finding of Id. AO have no legs to stand. The above finding of Id. AO is without considering the stock summary as well as day to day stock register submitted during the course of assessment proceeding. On the basis of

day to day qty. of stock register your honour will find that if the quantity embodied in the purchases made from M/s Girdhar Jewellers Private Limited, which are 65,471.570 gms. (verifiable from purchases bills enclosed at PB Page 195 to 214), is not taken into consideration even then the assessee was having sufficient stock to make the sale. This is apparent from the following summary chart of quantity detail of Gold ornaments 22 kt. of the period from 03.11.2016 (i.e. the day from which the amount received against cash sale accumulated with assessee and deposited after 08.11.2016 in demonetized currency) to 08.11.2016 (close of business on the day when demonetization announced) A) Stock position (from 03.11.2016 to 08.11.2016) by including the goods purchased from Girdhar Jewellers Private Limited in Stock quantity: -

Name of Item	Unit	Opening Stock (+)	Purchase (+)	Mfg (Net) (+)	Sales
Gold Ornaments 22 Kt	Gms	3,86,138 .49	0.00	0.00	29,05

B) Stock position (from 03.11.2016 to 08.11.2016) by excluding the goods purchased from Girdhar Jewellers Private Limited in Stock quantity: -

Name of Item	Unit	Opening Stock (+)	Purchase (+)	Mfg (Net) (+)	Sales (
Gold Ornaments 22 Kt	Gms	3,20,666.92	0.00	0.00	29,056.

Thus if the quantity embodied in the alleged non-genuine purchase is not taken into stock then still the assessee was having the sufficient stock to make the sale. Therefore, the finding of Id. AO that the purchase made from this party is book entry to show high stock before demonetization is incorrect.

Motisons Jewellers Ltd.

vi) From the submission it is apparent that the purchases made from the above named parties are genuine and payment of purchase consideration was made through banking channels. There was no motive of the assessee to introduce the alleged non-genuine purchases in books of accounts. Therefore, the purchases of the assessee cannot be treated as non-genuine. The reliance is placed on the following decisions: -

a) Bhagatram, Hyderabad Vs ACIT (ITAT Hyderabad) Appeal Number : ITA No. 1753/Hyd/2018 dated 28/07/2020 (Copy at Case Law PB Page No. 76-80) it is evident that the assessee had made

purchases apparently from his accounted money as the payments have made through banking channels. Further it is also a fact that the Gold/Jewellery purchased are either sold by the assessee or remains with the assessee as his closing stock, since there are no other contrary findings by the Revenue. Therefore, I hereby set aside the order of the Ld. CIT (A) and confirm the order of the Ld. AO.

b) 2017 (10) TMI 729 - GUJARAT HIGH COURT PCITSurat-1 v/s Tejua Rohit Kumar Kapadia (Copy at Case Law PB Page No. 81-82) Bogus purchase - Held that:-The appellate authority as well as the Tribunal came to concurrent conclusion that the purchases already made by the assessee from RajImpex were duly supported by bills and payments were made by Account Payee cheque. Raj Impacts also confirmed the transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee the trader had also shown sales out of purchases made from Raj Impex which were also accepted by the Revenue, no question of law arises.

In view of above submission it is conclusively proved that the purchases made from both the parties are genuine, verifiable and there was no motive with the assessee to introduced the bogus purchases in the books of accounts. The ld. AO could not bring any positive material on record to prove his allegation to be correct. Therefore, the books of accounts rejected on this footing and further action taken by ld. AO on this ground may kindly be quashed.

4.3.7 Sale of Pure Gold For the finding of ld. AO at 3rd para of page 18 of the assessment order it is submitted that the same is given without appraising the facts of the case property. In this regard we may submit that from the day to day Motisons Jewellers Ltd.

stock summary submitted during the course of assessment proceedings it is apparent that no pure gold was sold by the assessee during the period from 03.11.2016 to 08.11.2016. The first sale of pure gold in the month of November-2016 was made on 11.11.2016. Further all consideration of sale of pure gold, sold in the month of November- 2016 was received through banking channels. The copy of stock ledger of pure gold for the period from 01.11.2016 to 30.11.2016 is enclosed at PB Page 184 to 185 and fact narrated above is duly verifiable from such ledger. Thus the finding of ld. AO have no bearing on the cash deposit in the demonetized currency. The ld. AO himself accepted such sales as genuine. Therefore, the finding of ld. AO is completely irrelevant and noting more than to a story which cooked to support the huge addition made by him, which itself have no legs to stand. In this regard we may further submit that from the day-to-day stock summary submitted during the course of assessment proceedings it is apparent that no pure gold was sold by the assessee during the period from 03.11.2016 to 08.11.2016. The first sale of pure gold in the month of November-2016 was made on 11.11.2016. Further all consideration of sale of pure gold, sold in the month of November-2016 was received through banking channels. The copy of stock ledger of pure gold for the period from 01.11.2016 to 30.11.2016 is enclosed at PB Page 184 to 185 and fact narrated above is duly verifiable from such ledger. Thus, the finding of ld. AO have no bearing on the cash deposit in the demonetized currency. The ld. AO himself accepted such sales as genuine.

From the stock summary it is apparent that the opening stock of pure Gold as on 01-11-2016 was 13385.100 grams + 746.330 grams = 14,131.43 grams. There was no purchase or sale of pure Gold in between 01-11-2016 to 10-11-2016. The first sale is to M/s S.K. Jewellers 4000 gram on 11/11/2016 over which the AO has no objection or dispute. Further this sale is through banking channel. Thereafter, the purchases of 13000 gram are from M/s Girdhar Jewellers Pvt Ltd on 15-11-2016, which has no concerned with the SCN deposited by the assessee. Thereafter the following purchases are from the group assessee:-

Date	Name of Group assessee	Quantity pure purchased	of gold	Amount
16/11/2016	Sanjay Chhabra HUF	13,000.00 gms		Rs 4,25,00,000/-
16/11/2016	Sandeep Chhabra HUF	13,000.00 gms		Rs 4,25,00,000/-
16/11/2016	Kajal Chhabra	31,000.00 gms		Rs 10,13,50,000/-
16/11/2016	Namita Chhabra	31,000.00 gms		Rs 10,13,50,000/-

Motisons Jewellers Ltd.

These group assessees have declared income under IDS 2016 and out of that income they purchased pure Gold and thereafter they sold pure gold to the assessee. The ld AO has not raised any dispute over the said purchases from group members. Further, the sale against these purchases on subsequent dates are through banking channel. Therefore, it has no concern with the SCN deposited by the assessee. The copy of IDS certificate, return filed by them and copy of assessment order passed u/s 143(3) in the case of Kajal Chhabra and Namita Chhabra is at PB Page 269 to 293.

On 17-11-2016 there are sales of pure Gold which is through banking channel and it has no concern with the SCN deposited by the assessee. On 21/11/2016 there is purchase of 433.300 gram pure Gold from Jain Associates and this purchase is no concern with SCN deposited by the assessee. On 23/11/2016 there is sales Madhu Sharma, Paras gems and jewellery S.K. Jewellers, and Gopal Sharma and the ld AO has not raised any dispute or objection over genuineness of these sales. Further all these sales are through banking channel and it has no concern with the SCN deposited by the assessee in bank.

4.3.8 Regular Books of accounts are maintained and the same are audited The assessee maintains regular books of account, which are audited by independent and reputed Auditor. The cash sales and the corresponding cash deposits in banks are duly reflected in books of the assessee in the respective years. The books of account and the entries pertaining to cash sales and cash deposits have been accepted by the Department in the assessments framed in the past years. The copy of assessment order of AY 2015-16 and AY 2016-17 are at PB Page 234 to 239. The audited financial statements form part of the regular returns filed by the assessee. The trend of cash sales and cash deposits existed in the past years as well as in the months subsequent to the demonetization period. The entries pertaining to cash sales and corresponding cash deposits in banks were duly reflected in the

books of account of the assessee. The audited books of account and the tax audit report for the impugned F.Y. 2016- 17 were also filed before the AO in course of the assessment proceeding and the sale for the other periods was accepted by the department. Sales shown by the assessee are fully backed with the sales bills, duly recorded in books of accounts and also in the stock register while on the other hand the ld. AO has not brought any material on record to establish that these sales are bogus.

Motisons Jewellers Ltd.

It is not the case of the revenue that assessee has not shown the relevant stock register before the assessing officer or not having the sufficient stock for making the sales. Even after eliminating the quantity from the stock, which enumerated in the purchases alleged by ld. AO as non- genuine, the assessee was having the sufficient stock to make the sale. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details. The ld. AO did not make any enquiry on the material submitted by the assessee. He merely proceeded on statistical analysis and also irrelevant or/and wrong findings to make the addition on account of cash deposits. He neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, and non-existing cash in the books of account.

Thus ld. AO has not brought any material on record to establish that the sale bills are bogus nor any evidence indicating that such sales was bogus. Merely analysing the data by twisting the same and giving some findings which are not alone sufficient to justify the addition the income so assessed in not tenable in the eye of law.

It is further most importantly relevant to mention here that the Commercial Taxes Department had accepted the sales of the assessee declared in its VAT returns as genuine, therefore there remains no reason to doubt the genuineness of part of such sale by the ld.AO. Copy of Assessment order of VAT and CST is at PB Page 139 to 147.

It is admitted position of law that no addition can be made in the income of the assessee only on the basis of suspicion. Suspicion howsoever strong but cannot partake the character of evidence. The reliance is placed on following decisions: -

- i) Dhakeswari Cotton Mills Ltd vs. Commissioner of Income-tax [1954] 26 ITR 775 (SC)(Copy at Case Law PB Page No. 83-89)
- ii) Umacharan Shaw & Bros vs. Commissioner of Income-tax [1959] 37 ITR 271 (SC) (Copy at Case Law PB Page No. 90-95)
- iii) CIT vs. Kapil Nagpal, DBITA 609/2014 (Delhi HC) (Copy at Case Law PB Page No. 96-104)
- iv) Goyal Gases (P.) Ltd vs. Commissioner of Income-tax [1997] 94 TAXMAN 57 (DELHI) (Copy at Case Law PB Page No. 105-106) It is admitted position of law the suspicion can be initiating point for investigation but not the final basis of assessment/reassessment/addition.



i) PCIT v. Aditya Birla Telecom Ltd. [2019] 105 taxmann.com 206 (Bombay) (Copy at Case Law PB Page No. 107-112) Motisons Jewellers Ltd.

ii) Rustagi Engineering Udyog (P.) Ltd vs. Deputy Commissioner of Income-tax [2016] 382 ITR 443 (Delhi). (Copy at Case Law PB Page No. 113-119)

iii) Principal Commissioner of Income-tax vs. Meenakshi Overseas (P.) Ltd [2017] 82 taxmann.com 300 (Delhi) (Copy at Case Law PB Page No. 120-129)

iv) CIT vs. Shri Jawahar Lal Oswal, DBITA 49/1999 (Punjab & Haryana HC) (Copy at Case Law PB Page No. 130-142)

v) Commissioner of Income-tax v. Neel Giri Krishi Farms (P.) Ltd. [2013] 218 Taxman 95 (Allahabad)(MAG.)(Copy at Case Law PB Page No. 143-146) 4.3.9 It is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address or/and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit.

1. It is not compulsory or mandatory under the I. Tax Act, 1961 to collect the information related to full name, address and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit. It is voluntary to the customer to provide their personal information to the assessee while goods being sold. The assessee cannot enforce or compel to their customer to give their personal information and if the assessee would do it ruined to the business of the assessee.

2. Further in the preceding financial year the same practice being followed by the assessee where no details of name, address and PAN of customer was available with the assessee. In the preceding year the cash sales made by the assessee were accepted by the ld. AO while completing the assessment proceeding u/s 153A r.w.s 143(3) of the Income Tax Act, 1961. Therefore, due to non-furnishing of address and PAN of the customer, the sale made by the assessee in the demonetization period cannot be doubted. The cash sales of the previous months, previous years and next month or years was also made on the same trend with same set of particulars. Therefore, only the sales made and utilized for depositing the demonetized currency cannot be doubted for this reason.

It is relevant to mention here that vide letter dated 15.10.2019 it was submitted to AO that being in large number all the sales bills of FY 2016-17 could not be scanned, therefore it was requested to ld. AO to allow to produce the same personally in physical form. The ld. AO was kind enough to allow to the assessee and the assessee submitted the Motisons Jewellers Ltd.

complete sale bills of FY 2016-17 in the office of ld. AO. The sale bill for the period from 29.10.2016 to 08.11.2016 were filed with ld. AO vide letter dated 15.10.2019. Although not required by law still most of the sales bills issued for the period from 03.11.2016 to 08.11.2016 had the name of the customers as provided by the customers. It is also relevant to mention here that sales bills for the lesser amount as prescribed under Income Tax law does not require to have name, address and PAN

and in these cases the assessee is not under obligation to verify the correctness of name of customer from ID proof of customers. In the sales bill of 08.11.2016, issued after announcement demonetization, looking to the overcrowded rush of the customers and in order to faster the work, the assessee prefer to mention the most possible and relevant details in the sale bills. Such bills comprising the name of the persons (in the most of the bills wherever provided by the customers) and description of goods sold. Therefore, it is not a case that the sale is not verifiable from the sale bills.

It is admitted fact that each transaction should be analyzed with the point of view of the businessman, generally prevailing practice in the trade and its acceptability in the eye of law. A transaction cannot be treated as non-genuine for wants of the details which are not required to obtain and keep as per the law. The reliance is placed on the following decisions: -

i) Hon'ble High Court of Bombay in the case of R.B. Jessaram Fatehchand (Sugar Dept.) v/s Commissioner of Income Tax [1970] 75 ITR 33 (Bombay) (Copy at Case Law PB Page No. 153-156) held that:-

Section 145 of the Income-tax Act, 1961 [Corresponding to section 13 of the Indian Income-Tax Act, 1922] - Method of accounting - Rejection of accounts - On assessee's inability to supply addresses of purchasers who purchased goods on cash, ITO rejected assessee's books of account showing result in respect of cash sale transactions, and made addition - AAC deleted additions but Tribunal restored ITO's orders - Whether there was no necessity whatsoever for assessee to maintain addresses of cash customers - Held, yes - Whether, therefore, rejection of book results of assessee was unjustified - Held, yes

- Whether, consequently, additions made to assessee's income were liable to be deleted - Held, yes

ii) Hon'ble ITAT Jaipur Bench in the case of ACIT Circle-1 Jaipur Vs M/s Uttam Chand Deshraj (ITAT Jaipur Bench ITA No 419/JP/2010 Order dated 25/03/2011) (Copy at Case Law PB Page No. 157-158) has made following findings as regard cash sales.

Motisons Jewellers Ltd.

"Making some sales in cash is also no ground for rejecting the books of account. There should be some material that cash sales made by assessee either on account of sale on a lower price or sale made out of the material which is not shown in the books of account. There is no instance that cash sales have been made on lower rate than prevailing market price. In view of these facts and circumstances, we hold that there was no justification in rejecting the books of account and disturbing the trading result."

iii) ITAT Delhi in Kishore Jeram Bhai Khaniya, Proprietor, M/s Poonam Enterprises v. ITO ITA No. 1220/Del/2011 ITAT Delhi Judgement dated 13.05.2014) (Copy at Case Law PB Page No. 159-167) The Hon'ble Tribunal held that We find that so long as the availability of stock in there and there is nothing adverse against the cash memos issued by the assessee, such cash sales cannot be doubted. Here it is pertinent to note that the volume of such cash sales at Rs.22.06 is to be seen in the light of assessee's total turn- over of Rs.10.29 crores. It is but natural that if a customer makes cash purchase and lifts the goods, there is no duty cast upon the seller to insist for the address of the purchaser. In the light of the fact that stock record was available with the assessee, which evidenced the making of sale, we fail to appreciate as to how any addition can be made by treating cash sales as bogus.....We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition."

#### 4.3.10 Provisions of section 68 are not applicable for sales

1. The cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in statement of profit & loss, therefore there is no occasion to again consider the same as income of the assessee by applying the provisions of section 68 of the Act. It is further relevant to mention here that if the intention of the legislature would be to apply the provisions of Motisons Jewellers Ltd.

section 68 of the Act on the sale transactions also than it such case as per law it would be mandatory to have the identity, genuineness and creditworthiness of each buyer. But the law is not so and in case of sale below to certain limit the assessee was not required to prove all these ingredients of section 68 of the Act and even also in case of sale exceeding to certain limit the assessee is not required to prove the creditworthiness of buyer. Thus, this also strengthen the contention of the assessee that the provisions of section 68 are not applicable on the transaction which are already credited in the P&L and the same can only made applicable on the cash credits such as loans, share application etc. It is an admitted fact that in the case of transactions of sales/purchases of goods/investments/assets the creditworthiness of the payee is not relevant for the receiver as the amount was received against the something sold to him, therefore such transactions cannot be examined with point of view of cash credits.

Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs Income-tax Officer Appeal No. 4 of 2002 NOVEMBER 7, 2006 [2008] 298 ITR 349 (Rajasthan) (Copy at Case Law PB Page No. 147-

152)held that no addition could be made in respect of the amount standing in the books of the assessee, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.

Ld AO accepted cash deposit in bank against all other cash sales except cash deposited in demonetization period: - It is also pertinent to note that while the A.O. has accepted the cash deposited in the bank accounts in the previous financial years, cash deposited in banks during the impugned F.Y. 2016-17 in the pre- demonetization period and cash deposited in banks from the sales made after 08.11.2016. The ld. AO did not accept the same modus operandi with respect to the cash deposited in demonetized currency merely on the pretext that the same was deposited in demonetized currency and hence was suspicious in nature. Thus, ld. AO is blowing hot and cold in same stream accepting and rejecting the explanations offered by the assessee with respect to the transactions of identical nature at his sheer convenience merely on the basis of surmises and conjecture without any evidence or material on record. Thus, bald allegation of ld. AO that the cash deposited in demonetized currency had arisen from some undisclosed source not reflected in the books of account as against the accounted cash sales in books of account and alsowhich is regular feature of the trade of assessee and in consistency with past history of assessee. The conclusion of ld. AO is dehorsof any credible evidence/material on record is unsustainable both in law and on facts. Addition so made by the AO deeming the impugned cash deposits arising out of accounted cash sales as unexplained cash Motisons Jewellers Ltd.

credits merely on the basis surmises & conjectures is fallacious and deserves to be deleted and ld. CIT (A) has deleted it rightly.

#### 4.3.11 Revision of Vat Returns:

The finding of ld. AO that quarterly VAT returns were revised to book the bogus sales is totally unsustainable because the same does not support to the additions made by ld. AO in any manner. The revision was not made for any particular quarter so as to alleged that such revision was made with the intention to book the bogus sales but the revision was made for all four quarters for the reasons that in original returns the composition sale or/and export sales remained un-declared by the mistake of accountant who was looking after sales tax matter. If this allegation of the ld. AO is accepted to be correct than it will also lead to a presumption that the assessee did not made any composition sale in any of the quarter of a single amount which includes the sales made otherwise than cash also.

Further in assessment order of VAT and CST, the revision of turnover has been accepted as genuine. Copy of VAT and CST assessment order is at PB 139-147.

#### 4.3.12 Assessment was made on surmises, conjectures and with bias pre-set mind

1) In view of the submission of the assessee, as given in ongoing paras it is clear that the assessee duly explained the source of cash deposited in bank a/c in demonetized currency and such explanation was supported by the documents. However, the ld. AO did not considerto such

submission and documents in right perspective and by brushing aside all the submission and settled principal of law made the huge additions. From the perusal of the assessment order it is explicit that the books of accounts were rejected and consequently impugned addition u/s 68, estimation of NP was made by the AO in the wake of demonetization and cash deposited in demonetized currency. Though the ld. AO was duty bound to examine the genuineness of purchases & sales and source of cash deposited in bank in demonetized currency but the same exercise was made with bias pre-set mind and with sole motive to treat the same as income of the assessee in any manner. This fact is apparent from the assessment order which was framed on the basis of wrong or/and inappropriate facts and without considering the submission as well as facts of assessee in right perspective, which lead to wrong addition in the income of the assessee which was not supposed to be made. The same is apparent from the following: -

Motisons Jewellers Ltd.

a) The amount deposited in demonetized currency out of cash balance as on 08.11.2016 is entirely added as income of the assessee presuming that as on this date the assessee did not holding any single legitimate SBN (Specified Bank Note) at the end of 08.11.2016.

b) SBN (Specified Bank Note) was deposit out of the funds realized during the period from 03.11.2016 to 08.11.2016 against cash sales, realization from sundry debtors and advance from customers and the same was entirely added as income of the assessee by presuming that during these days the showroom of the assessee was not functioning and there was no regular cash sales of single penny on these days.

c) The purchases from the genuine parties, whose assessment were itself made by the income tax department and their sales were accepted as genuine, were treated as non-genuine without considering the fact even if it is presumed that such purchases were actually not made prior to demonetization than still the assessee was having sufficient stock in hands to sale the goods.

d) The cash realized from sundry debtors during the period from 03.11.2016 to 08.11.2016 was not treated as genuine and the part cash realized from same debtors against same sale prior and after to this period was treated as genuine. The similar happened in the case of advance received from customers during the period from 03.11.2016 to 08.11.2016.

e) It is well known fact that after the announcement of demonetization there was heavy rush in the showrooms of the Jewellers and the same resulted the heavy cash sale by the Jewellers. The assessee was also one of that who experienced the heavy cash sales after the announcement of demonetization till midnight i.e. 12 O- clock of 08.11.2016. The ld. AO treated the entire sales as not genuine presuming that no sale was made by the assessee after the announcement of demonetization.

2) The ld. AO while making the impugned addition u/s 68 and rejecting the explanation offered by the Assessee with respect to the nature and source of the cash deposited in bank accounts during the demonetization period in demonetized currency and have acted merely on surmises, conjectures,

suspicion, presumptions and assumptions. The humble submissions of the assessee highlighting the glaring internal inconsistencies in the orders of the Id. AO the repeated violations of the provisions of law by them are as under:

i) The AO has treated the cash deposited in the banks during the demonetization period in demonetized currency as unexplained cash credits u/s 68 of the Act although the nature and source of the cash deposits being proceeds arising out of cash sales etc. is patently evident from the entries in the audited books of account of the Assessee.

ii) It is not the case of the Department that the cash deposited in the banks during the demonetization period was in excess of what was Motisons Jewellers Ltd.

available in the cashbooks. The fact that the cash deposits in banks were sourced out of cash sales is evident from the entries in the cashbooks.

iii) The books of account of the Assessee have been audited by an independent reputed auditor. The cash sales & receipts are duly supported by relevant bills, which were produced before the AO in course of the assessment proceedings, and nothing adverse in connection therewith was noted by the A.O.

iv) The fact that cash sales and corresponding cash deposits in banks have been regular feature of the assessee's business over the past several years has not been denied by the A.O. In fact, in the past, the AO after conducting a detailed scrutiny of books of account of the assessee and after arriving at complete satisfaction with respect to the correctness of the entries recorded therein accepted the cash sales and corresponding cash deposits in banks in the assessments framed u/s 143(3) of the Act. Thus, there is no reason why similar modus operandi, which continued in the current F.Y. 2016-17 (A.Y. 2017-18), should not be accepted by the AO and rejected on mere surmises and conjecture of the A.O.

4.3.13 The Id. AO wrongly applied the provisions of section 115BBE with a motive to levy the tax on the higher slab rate.

1) The addition so made taxed as per the provisions of section 115BBE of the Act while no show cause notice was given to assessee for applying this section.

2) As stated in the forgoing paras the whole purpose of the Id. AO in singling out the cash deposited in demonetized currency as arising out of unexplained sources (as against the accepted position in the past and the subsequent periods) and is to somehow trigger the provisions of section 115BBE read with section 68 of the Act to the income already offered for tax by the assessee (as cash sales) at a higher rate of tax of 77.25% (i.e. flat rate of 60% plus surcharge @ 25% on such tax and cess as applicable) on gross basis (without any deduction/allowance). Section 115BBE of the Act is a machinery provision to levy tax on income and it should not enlarge the ambit of section 68 of the Act to create a deeming fiction to tax any sum already credited/offered to tax as income. Section 68 of the Act traditionally applies to unexplained 'cash credit' like loans, deposits, advances, share

capital, etc. and not to sums already offered to tax as income by the assessee in its return of income at the highest slab rate. Such recourse is unwarranted keeping in mind the objective to introduce section 115BBE of the Act was only to curb the practice of laundering of unaccounted money by taking advantage of the basic exemption limit.

Motisons Jewellers Ltd.

3) The reason and purpose of the provision was explained by the explanatory memorandum to the Finance Bill 2012 as under:-

1) "Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed income if the amount of such deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.

2) In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years."

4) Thus, the intention of the Legislature behind introduction of section 115BBE was not to bring to tax genuine receipts already offered to tax as income by the Assessee at higher tax rates. Such an interpretation would lead to recurring attempts on the part of the revenue authorities to reject genuine explanations offered by the assessee with respect to sums credited/offered as income in its books as unsatisfactory solely to extort higher rates of taxes thereon u/s 115BBE of the Act. The A.O in exercising his powers u/s 68 of the Act is not vested with unfettered powers to reject any explanation as being not to his satisfaction merely on the basis of surmises and conjecture. The AO is bound under law to act reasonable and just while framing any satisfactory opinion surrounding the explanation offered by the taxpayer. From the facts of the case at hand, it is clear that the A.O has acted unreasonably and capriciously in rejecting the genuine explanations offered by the Assessee in respect of the impugned cash deposits as unsatisfactory solely with the aim of fastening exorbitant tax liability on the assessee under the garb of unexplained cash credit u/s 68 of the Act. Such recourse primarily hedged on surmises, conjecture, assumptions, presumptions and whims of the Id. AO is clearly unwarranted and the additions so made is unsustainable in the eyes of law and thus deserves to be quashed.

5) It is also pertinent to mention here that before applying the provisions of section 115BBE of the Act the specific show cause notice was not given to the assessee and in absence of specific show

cause Motisons Jewellers Ltd.

notice the provisions of this section cannot be applied in mechanical manner. Reliance is placed on the decision of Hon'ble Jodhpur bench in the case of Suraj Kanwar Devra v/s ITO 2(2), Udaipur in ITA No. 50/JOD/2021 dated 23.11.2021.

6) Without prejudice to our forgoing submission we may further submit that amendment provisions of section 115BBE of the Act as amended by the Taxation (Second Amendment) Act, 2016 are applicable from 15.12.2016 and are not retrospective in operation and therefore not applicable to the cash deposited in the bank prior to 15.12.2016. The Tax laws as the Taxation (Second amendment) Act, 2016 was amended on 15.12.2016 and received the ascent of President of India on the said date. It was submitted that though the amendment was applicable for assessment year 2017-18 but only on income referred to in said section pertaining to the date after 15.12.2016. As in case of the assessee, the cash in demonetized currency was lastly deposited on 06.12.2016 and accordingly at the material time, old provisions of section 115BBE were applicable. The amendment provisions are not retrospective in operation and are not applicable in the present case and therefore the ld. AO has been wrongly taxed the addition made u/s 68 of the Act by applying the amended provisions. In support of this the reliance is place on decision of Hon'ble Supreme Court in case of Karimtharuvi Tea Estate Ltd. vs. State of Kerala [1966] 60 ITR 262 (SC). (Copy at Case Law PB Page No. 255-257)

10. Now, it is well-settled that the Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into, force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.

18. The Surcharge Act having come into force on September 1, 1957, and the said Act not being retrospective in operation, it could not be regarded as law in force at the commencement of the year of assessment 1957-58. Since the Surcharge Act was not the law in force on April 1, 1957, no surcharge could be levied under the said Act against the appellant in the assessment year 1957-58.

4.3.14 The submission on the observations/findings of ld. AO, as enumerated in para 4.1 (page 2 of assessment order) and 4.6 (page 14 of assessment order), is as under: -

Para Observationso Explanation of Assessee No of f AO AO's Order Motisons Jewellers Ltd.

Para The cash sale Due to demonetization of currency note of Rs. 500 and 1000/- 4.6 (1) of Rs. public rushed to jewellery shop to convert their demonized page 9,79,23,724/- on currency into Gold which resulted huge sales after 14 a single day pronouncement of demonetization. This fact is well known to 4.6(1 does not seems everyone and supported by news in leading Newspaper. PB &(2) genuine page 268). The overall cash salesof the assesseehas not page following the increased but shifting of sales of next month to 08/11/2016. 15 past year's Admittedly, in previous years i.e.AY 2015-16 & AY 2016-17 the trends. assessee did not experienced this much of sales in a single day though the assessee was having similar structure of building and The assessee man power but it is also admitted fact that the demonetization has justified the did not happened in these years. This



was an unprecedented abnormal sale situation in the history of the assessee, therefore there cannot be any precedent of sales made because of this historical incident of demonetization and there is no substance to compare the data of sales Diwali and made because of announcement of demonetization with any Marriage previous data. The comparison can only be made when the festivals. situations are similar.

However, the Further we have compared the following data for which no same is not adverse findings was made by the ldAO:-

acceptable considering the fact person who has budget for marriage ceremonies will purchase all the items below Rs. 2,00,000/-	Para 4.3.4 (a) Comparison of month wise Cash in hand in last Four years. Para 4.3.4.(b) Comparison of Cash sales and % of total sales in last three years. Para 4.3.4 (c) Comparison of Cash sales in the month of Nov and % of total sales. Para 4.3.4.(d) Comparison of Cash deposited in Bank in the month of Oct, Nov and Dec in last three years. 4.3.5 Comparison of Cash sales in the month of Oct Nov Dec in the last three years.
Purchases on Diwali and marriages are	Further, we have compared the data of cash sales of Nov 2014 with cash Sales in Nov 2014 and Nov 2015 and explained that cash sales in Nov 2016 was at lesser figure than in Nov 2015

not purchases and Nov 2015. The sales of particular day i.e.08/11/2016 has like walking increased abnormally because of demonetization but this sales person come to were also shifting of regular sales of other days on particular day show room of because of demonetization. We have submitted detailed assessee. explanation in this regard in above paras.

Motisons Jewellers Ltd.

Para 4.6 (2): - So far as issuing 725 invoices with the within 3 hours it is Para The assessee submitted that as stated in earlier para the sales also include the 4.6 ( has further sales made on 08.11.2016 prior to announcement of

2) claimed that demonetization. In the regular course also the assessee was Page there was a making cash sales to 100 to 130 persons. Thus, on the basis of 14 rush in the shop previous trend of the assessee if it is presumed that out of total to purchase the 725 cash invoices issued on 08.11.2016 about 125 was of sales jewellery after made prior to announcement of demonetization then the balance the news was sales invoices remains only 600 and as stated earlier looking to published in the infrastructure of the assessee and manpower available it various was well capable to make the sales to this much of persons after newspapers. the announcement of demonetization. The claim of the So far as observations of the ld. AO that gold jewellery is assessee totally not an item which can be purchased within 4 to 5 minutes but it misplaced as takes several minutes to chose the jewellery items at their the Hon'ble requirement such as measurement of the gold items and their Prime Minister capacity to pay on such item. Hence it cannot be accepted that declared people rush to the premises of the assessee and purchase gold demonetization jewellery item in a similar way as they

purchase vegetables it is at 8:30 PM on submitted that the observation of ld. AO may be taken as correct 08-11-2016 if the situation would be the normal. This was being the through abnormal and historical situation, therefore looking to the heavy electronic demand with Jewellers and overcrowd on its showroom the media. Further, customers were not provided much more options of selection of the SBN Jewellery. It was compulsion to the customers to choose & currency of 500 finalized the items in very quick manner as there was heavy rush and 1000 was in showrooms. As stated earlier that as on the date of legal tender till demonetization the manpower strength of the assessee was of 12:00 PM of 08- 91 persons out of which 63 staff members were salespersons. 11-2016 and Thus averagely to 9 to 10 customers were deal by each sale assessee has staff within the time span of about 3.5 hours (i.e. 210 minutes) issued 725 i.e. average 20 to 22 minutes were available for each customer invoices within which is quite reasonable looking to the situation existed after 3 hours. It while the announcement of demonetization and limited time allowed to be reasonable the customer to stay in the showroom.

to presume that  
first half an hour  
would have  
lapsed to react  
on such  
declaration and  
finding out how  
to consume  
SBN note of  
500 and 1000.  
Further  
the gold  
jewellery is not  
an item which  
can be

Motisons

purchased  
within 4 to 5  
minutes but it  
takes several  
minutes to  
choose the  
jewellery items  
at their  
requirement  
such as  
measurement of  
the gold items  
and their  
capacity to pay  
on such item.  
Hence it cannot  
be accepted  
that people rush

to the premises  
of the assessee  
and purchase  
gold jewellery  
item in a similar  
way as they  
purchase  
vegetables.

Para  
4.6 (3)  
page  
15

3. Further,  
the argument of  
the assessee is  
contrary itself.  
As per logic of  
the assessee  
when  
demonetarizatio  
n was declared  
people rushed  
to jewellery

First of all this is to submit that the cash realized ag  
sale in the month of October-16 was already deposited in  
a/c before demonetization, therefore, the comparison of  
sale of October-2016 is not relevant in this case.  
However still it is relevant to mention here that one of  
reasons for lower sale in the month of October 2015 was  
sale of Jewellery was influenced according to Hindu Ausp  
festival Dhanteras and Diwali. In the year 2015, Diwali  
was on 11/11/2015 while in the year 2014 & 2016 it was i  
October month. Therefore, in the year 2014 & 2016 the sa  
the October month was higher than sales of same month in

shop than there year 2015. Correspondingly the sale of November month of year should be extra  
2014 & 2016 was lower than to sale made in November-2015. ordinary Therefore, the combined  
sales for Oct and Nov 2014 & 2015 increase in the should be compared with the combined sales of  
2016. sale in the The sales of the October and November months are month of relatively high in  
comparison to sales in other months due to Diwali November as festival and marriages. From the  
following chart of data of sales in the date of the month of October and November of these years it is  
apparent demonetarizatio that the sale of the Diwali month was higher than sale of other n dated  
08-11- month.

2016 pertains to Month FY 2014- FY 2015- FY 2016-

November.		2015	2016	2017
Whereas	in	October	17,60,14,5	11,66,19,4
			18,81,14,5	18,81,14,5

Motisons Jewel

assessee has	Novemb	15,50,86,5	19,17,28,1	13,55,23,9
--------------	--------	------------	------------	------------

increase in the	Total	33,11,01,0	30,83,47,6	32,37,13,5
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October in  
compare to sale

From the above chart it is apparent that the cumulati

of November at sale of these two months of three years was almost same and 13%. there was only  
marginally increase and decrease. The ld. AO completely ignored to this fact.

It is also relevant to mention here that soon after Diwali festival, on 08.11.2016 the demonetization  
was announced and the peoples who were having the cushion in cash for purchases of Jewellery

consumed the same in the evening soon after announcement of demonetization. Therefore, due to this reason, the sale of 08.11.2016 was relatively higher but overall sales of November-2016 could not increase because due to announcement of demonetizations the major sales of other days in Nov 2016 shifted to 08/11/2016 on the day of such announcement and there was frenzy amongst people who wanted to convert their SBN into gold.

The above contention of the appellant is supported by the news article of "The Economic Times" dated 08-12-2016, wherein the secretary of the India Bullion & Jewellers Association mentioned that the jewelries had sold 15 tonnes of Gold ornaments and bars worth around Rs. 5000 crores on the intervening night of November 8 and 9, 2016 after the government demonetized the Rs. 500 and Rs. 1000 currency notes. (copy at PB page 268).

The sale of ornaments had subsequently for the rest of the month of November and December 2016 had seen a dry spell as the people had purchased jewellery in demonetized currency during the closing hours of 8th November itself not only for the wedding in immediate vicinity but also for weddings and functions in late November or December and also even otherwise for future use. The ld. AO completely ignored this vital and important fact of the case.

Para Further, It is not compulsory or mandatory under the I. Tax Act, 1961 to 4.6 ( Assessee failed collect the information related to full name, address or/and PAN of

4) to furnished the the customer to whom goods were sold in cash during the course page details of the of business below to the prescribed limit. The reliance is placed 16 persons such as on the following decisions: -

full name, i) Hon'ble High Court of Bombay in the address and case of R.B. Jessaram Fatehchand (Sugar PAN to whom Dept.) v/s Commissioner of Income Tax cash sale was [1970] 75 ITR 33 (Bombay) (Copy at Case made during the Law PB Page No. 153-156) demonetization ii) Hon'ble ITAT Jaipur Bench in the case of period. ACIT Circle-1 Jaipur Vs M/s Uttam Chand Deshraj (ITAT Jaipur Bench ITA No Motisons Jewellers Ltd.

419/Jp/2010 Order dated 25/03/2011) (Copy at Case Law PB Page No. 157-158 )

iii) ITAT Delhi in Kishore Jeram Bhai Khaniya, Proprietor, M/s Poonam Enterprises v. ITO ITA No. 1220/Del/2011 ITAT Delhi Judgement dated 13.05.2014) (Copy at Case Law PB Page No. 159-167) Para The quarterly The finding of ld. AO that quarterly VAT returns were revised to 4.6 (5) VAT returns for book the bogus sales is totally unsustainable because the same page AY 2017-18 does not support to the additions made by ld. AO in any manner. 16 have been The revision was not made for any particular quarter so as to revised by the alleged that such revision was made with the intention to book the assessee which bogus sales but the revision was made for all four quarters for the he explained reasons that in original returns the composition sale or/and export stating that sales remained un-declared by the mistake of accountant who composition was looking after sales tax matter. If this allegation of the ld. AO sales were is accepted to be correct than it will also lead to a

presumption omitted being that the assessee did not made any composition sale in any of the reported in quarter of a single amount which includes the sales made original return. otherwise than cash also.

However, it is The cash deposited in bank in demonetized currency was surprising that out of cash balance accumulated from cash sales and amount the realized from customers during the period from 03.11.2016 to assessee forget 08.11.2016. Thus, the cash realization against sales/ from to report customers of the period prior to 03.11.2016 was already composition deposited into bank account prior to announcement of sale to the demonetization and corresponding sources of such deposited extent to Rs. also accepted by the ld. AO as genuine. Therefore, revision of 28.52 cores, Rs. VAT returns for the period from 01.04.2016 to 30.09.2016 26.00 cr., Rs. (i.e. first two quarters) was not because of any mala-fide 61.4 cr. in each intention but the same was for the bona-fide reasons and quarter cash sales of this period was accepted genuine by the AO respectively. meaning thereby the Revision of Vat return was accepted by However, the the ld. AO as genuine. Therefore, once the sales declared in aforesaid such revised quarterly returns had been accepted by the ld. AO composition and such sales have no bearing on demonetized currency sale comes deposited into bank account than how it can be presumed that around 70% to such revision for the period 01-10-2016 to 31-12-2016 was for 80% sale of booking the bogus cash sales.

total sale of the The due date of filing of VAT return of third quarter (i.e. for assessee. The the period from 01.10.2016 to 31.12.2016) was obviously after mistake was not 31.12.2016 and the same was filed (originally) on 15.02.2017 i.e. happened once much after to deposit the demonetization currency deposited into but again and bank a/c. Therefore, there was no reason to revise the VAT return again till with the intention to book the bogus sale to justify the source of demonetization demonetized currency because the original return was itself filed n. Further, the much after the date of deposit of cash in bank account and if the assessee has assessee was intended to book the bogus sale to justify the cash not furnished deposit in demonetized currency than it would have declared such Motisons Jewellers Ltd.

any challan of sale in original return also. This shows that the revision of VAT composition return of this quarter was also made for bona-fide reasons. In fees paid as revised return the composition sale of Rs. 61,44,79,913/- reported stated in reply. while the assessee deposited Rs. 12,17,48,500/- only in demonetized currency. It is also relevant to mention here that most part of SBN i.e. Rs. 12.00 crore was deposited on next very first working day of bank after demonetization i.e. on 10/11/2016 and rest of the amount was also deposited before Dec 2016. Had the revision would have been made with the intention of book the bogus sale to justify this deposit than in the revised return the sale would have been increased with this amount only and not more than to that more specifically the balance sales has been accepted by ld. AO himself as genuine.

The data of sales of VAT return of fourth quarter (i.e. for the period from 01.01.2017 to 31.03.2017) are not at all relevant with wake to source of amount deposited in demonetized currency as the period of this return is of after close of period when the demonetized currency could be deposited into bank. Therefore, no adjustment could have been made in this return to book the bogus sales in view of demonetization. The return of this quarter was also revised by the assessee for the same

reason for which the returns of other three quarters were revised i.e. in original returns the composition sale or/and export sales remained un-declared and in revised return of this quarter the composition sales of Rs. 43,51,73,448/- and export sales of Rs. 3,93,65,114/- was declared which remained un-declared in original return.

The fact that additional sales declared in the revised return was genuine sales made on day to day basis and the same remained to be reported in original return for some bonafide reason is verifiable from the fact that all the taxes payable (VAT/CST) thereon was paid on due time i.e. all the taxes were paid prior to filing of Original return and not at the time of filing of revised return. Had the revision would have been made with the mala fide intention as alleged by Id. AO then the additional tax liability would arise in the revised return and the same would have been paid at the time of revision of the return but this is not the case of the assessee because no additional tax was paid while revising the return. This fact is duly verifiable from the date wise detail of taxes deposited on composition sales as available in the Vat returns and its assessment order submitted to Id. AO (Copy at PB Page 110 to 147). The finding of the Id. AO that "the assessee has not furnished any challan of composition fees paid as stated in reply" it is submitted that the details of payment of composition taxes was duly verifiable from the detail submitted by the assessee, its VAT returns and also from the VAT assessment order, therefore the assessee did not find relevant to submit the copies of challans separately. However, the Id AO has not asked specifically to furnish the copy of vat challan otherwise the same could have been produced. However, such detail was already available with the Id AO in Vat return and Vat Assessment Order.

Motisons Jewellers Ltd.

It is further most importantly relevant to mention here that the Commercial Taxes Department had accepted the sales of the assessee declared in its VAT returns as genuine, therefore there remains no reason to doubt the genuineness of part of such sale by the Id. AO.

Para Name, The credit sales of Jewellery is made to the parties who are either 4.6 (6) telephone well known of salesman/staff or well known of existing reputed page number and customers or known persons of the assessee group.

16	address debtors available.	of not given	In case of sales to unknown parties the delivery of the goods when the complete payment is received from the party.
----	----------------------------------	--------------------	--

Sometime the delivery of the goods are not handed over to the party at the time of sales because some time after purchase of Jewellery the customer want some alteration in the size/design of the Jewellery or filing of wax etc. and therefore such Jewellery, after finalization is left with the assessee for such alteration. In such a situation the invoice is generated at the time of finalization of Jewellery but the delivery of the Jewellery is given at later date after doing the work as directed by the customer. Therefore, in such situation the entire or part payment is received when the delivery of the Jewellery is given to the party.

In both the cases the payment of the assessee always be secure therefore it is not required to have much more identity of the customers. The credit sale and purchases are usual features in the trade of the assessee and the same cannot be denied. The ld. AO has completed assessment of assessee for AY 2015-16 and AY 2016-17 u/s 143(3) wherein the outstanding amount against credit sales appearing as under in the Balance Sheet of the assessee was accepted.

AY 2015-16: - Rs. 97,00,980/-

AY 2016-17: - Rs. 34,92,699 Further the rate of the sale is decided as and when the Jewellery is finalized and the invoice is generated. Allowing the credit to party is matter of understanding in between the assessee and customers. Further, out of total amount of Rs. 12,17,48,500/- the cash realized from debtors was of Rs. 25,96,480/- which is meager amount looking to the quantum of sales of the assessee. It is further relevant to mention here that the total sales to the parties from whom this amount was realized was Rs. 41,75,995/- (Relevant chart submitted during assessment is at PB Page 163) against which Rs. 13,30,000/- was received immediately at the time of sales i.e. on or prior to 03.11.2016, Rs. 25,96,480/- received during the period from 03.11.2016 to 08.11.2016 and balance Rs. 2,49,515/- after 08.11.2016. The ld. AO treated the part cash received from same parties against same sale prior to 03.11.2016 and after 08.11.2016 as genuine and only treated the amount realized during period from 03.11.2016 to 08.11.2016. It is Motisons Jewellers Ltd.

relevant to mention here that when the amount realized from sundry debtors in other period having same set of details are being treated as genuine than there remains no reason to treat the amount realized from debtors during the period from 03.11.2016 to 08.11.2016 as non-genuine and the same is because of single reason that the ld. AO was bent to making the huge addition for which he was supposed to cook the story.

Para On telephonic The ld AO listed out only 6 cases at page 5 of Assessment order. 4.6 (7) verification of Firstly none of them has denied. They either said that they do not page debtors on remember or not responded. The matter was belongs to May to 17 random basis Nov 2016 and inquiries was made in 2019. Further, the amount they denied to was very small so it is very possible not to remember. recognize any such purchases on credit.

Para In these para The elaborate submission on this issue was given to CIT (A) and 4.6 (7) the ld. AO relevant submission is at PB Page 298 to 305. After considering page alleged that that the reply of the assessee the CIT (A) treated the purchases made 17 the purchases from both the parties as genuine. The finding of CIT (A) is at Para made from M/s 6.2 (ix and x) page 48 and 49 of order of CIT (A). Since, the Paras Gems department not challenged to the finding of CIT (A), whereby she & Jewellers and treated the purchases made from both these parties as genuine, Girdhar therefore this issue has attained to finality and therefore, no Jewellers further submission is required on this issue. Still, on this issue we Private have submitted our detailed reply in para 4.3.6 above.

Limitedis not  
genuine.

Copy of Assessment Order u/s 143(3) PB page 244-245 & 246

Para 4.6 (2) Page 18 ld. A0 doubted the genuineness of advances of Rs. 11,86,250/- So far as doubt of ld. A0 regarding the genuineness of advance of Rs. 11,86,250/- received from the customers during the period from 03.11.2016 to 08.11.2016 it is submitted that receipt of advance from customer is regular feature of trade of the assessee and the same was also prior and after to the period

received from 03.11.2016 to 08.11.2016. Thus the advances received during the customers the period from 03.11.2016 to 08.11.2016 only cannot be treated during the as non-genuine. Further, out of total amount of Rs. 12,17,48,500/- period from deposited in bank in demonetized currency the advance received 03.11.2016 to from customers was of Rs. 11,86,250/- which is very meager 08.11.2016 amount looking to the quantum of sales of the assessee. The details of advances received viz a viz sales made to such parties, in which the advances were adjusted are as under: -

			Date of advance	Advance amount	Name of party	Date of made and bill No.
Motisons Jewellers Ltd.						
03.11.2016	10,000	Anil Ji Mehta	07.01.2017 Bill No. MG 10852	discount) 55,000		
03.11.2016	1,00,000	Asha Ji Bakliwal	30.11.2016 Bill No. MG-	1,00,000		
03.11.2016	10,000	Prahlad Meena	29.11.2016 Bill No. MG-	70,000		
03.11.2016	50,000	Siddharth Ji	18.11.2016	50,000		
03.11.2016	5,000	Sweta Ji	13.01.2017 11162	31,000		
04.11.2016	46,650	Mahal Ram Meena	26.11.2016 Bill No. JB-	51,050		
04.11.2016	18,000	Mahendra Kumar Jain	17.11.2016 Bill No. MG-	1,11,227		
04.11.2016	10,000	Seema Ji Mittal	05.12.2016 Bill No. MG-	88,441		
04.11.2016	10,000	Mukesh Ji (Geet Jewellers)	28.11.2016 Bill No. MS-6168	15,450		
05.11.2016	5,000	Anish Ji	09.11.2016	23,000		



05.11.2016	20,000	Ashima Gupta	02.01.2018 Bill No. MG-13722	29,000
05.11.2016	40,000	Giriraj Prasad	03.12.2016 Bill No. MG-	4,71,500
05.11.2016	10,000	Reenu Pareek	13.12.2016 MS-5386	10,000
05.11.2016	1,00,000	Shri Narayan Sharma	29.06.2017 Bill No. JB-1710	1,02,000
06.11.2016	4,000	Pankaj Meena	15.11.2016 Bill No. MG-	13,700
06.11.20	5,000	Namita Ji	14.11.2016 Bill No. MG-	16,500
Motisons Jewellers Ltd.				
16		Garg	8842	
06.11.2016	25,000	Chandrakala Ji	08.11.2016 Bill No. MG-	90,000
06.11.2016	1,00,000	Gurpreet Kaur	05.12.2016 Bill No. MG-	2,08,900
06.11.2016	1,00,000	Maya Devi Ji	05.12.2016 Bill No. MG-	1,90,750
06.11.2016	1,00,000	Norat Mal Ji	05.12.2016 Bill No. MG-	1,35,000
06.11.20	50,000	Pankaj Ji	13.12.2016	68,000
06.11.2016	6,500	Richa Shukla	15.12.2016 Bill No. MG-	56,500
06.11.2016	5,000	Komal Sharma	11.11.2016 Bill No. MG-	32,800
07.11.20	15,000	Jassi Ji	03.12.2016	42,200
07.11.20	50,000	Kailash Ji	08.11.2016	1,37,500
07.11.2016	5,000	Krishna Joshi	13.05.2017 Bill No. MG-	44,380
07.11.20	10,000	Rakesh Ji	23.11.2016	18,265

07.11.20	13,000	Suman Ji	02.12.2016	43,000
08.11.201	60,000	Ankit Ji	18.11.2016	1,51,200
08.11.201	1,40,000	Ashok Ji	18.11.2016	1,80,400
08.11.20 16	3,000	DeenDayalG urjar	21.11.2016 Bill No. MG-	1,46,500

Motisons Jewellers Ltd.

08.11.20 16	10,000	Shubham Ji Jain	03.01.2018 Bill No. MG- 13757	14,490
08.11.20 16	28,500	Malvika Ji Mathur	25.11.2016 Bill No. MG-	32,400
08.11.20	20,000	Puneet Ji	09.11.2016	1,35,700
08.11.20 16	1,100	Anil Ji Bhilwara	02.01.2018 Bill No. MG- 13719	3,420
Total	11,86,2			28,33,573

From the perusal of the above chart it is apparent that subsequently the assessee made the total sales to above named parties of amounting of total Rs. 28,33,573/- and after adjustment of advance payment of Rs. 11,86,250/- the balance payment of Rs. 16,47,323/- was received through parties in cash as well as banking channels. The sales of this balance amount is treated by the ld. AO as genuine, therefore there should not be any reason to amount received as advance during period 03.11.2016 to 08.11.2016 as non-genuine. The single transaction is assessed by ld. AO by dual analogy i.e. part amount realized during period 03.11.2016 to 08.11.2016 as non-genuine and amount realized thereafter as genuine. In case the ld. AO wanted some more details from the assessee in respect of advances so received, over & above to whatever submitted by the assessee, he could have asked to assessee to submit the same but the same were never called for and the advances simply treated as non-genuine by holding that no full detail of such person was furnished and not available for verification and completely ignoring the details already filed by the assessee.

In this regard the reliance is placed on the following decisions: - (1) Hon 'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs ITO (2008) 298 ITR 349) (Copy at Case Law PB Page No.

173-178) (2) ITAT, Nagpur Bench in the case of Mis Heera Steel Limited vs ITO (2005) 4 IT J 437)  
(3) Hon'ble M.P. High Court in the case of Addl. CIT vs. Ghai Lime Stone Co. (1983) 144 ITR  
140(MP)) (Copy at Case Law Motisons Jewellers Ltd.

PB Page No. 179-180)

Para Further, from We have submitted explanation in detail in Para 4.3.7 above  
4.6 (1 perusal of the  
last stock of pure  
para) gold it is found  
page that Pure Gold  
17 opening stock  
for the month of  
November,  
2016 was  
14131 grams  
and total sale of  
pure gold during  
the month was  
94381 grams.  
Total sale  
during the year  
was 137353  
grams and  
month of  
November,  
2016 was  
94381 grams. In  
a particular  
month sale of  
pure gold was  
68.71% of total  
sale. It is highly  
surprising that  
how was  
assessee  
predicted that  
there will be  
sudden  
increase in  
demand of pure  
gold in that  
particular  
month.

4.3.15 In support of our submission reliance is also placed on the following judgements: -

1) ITAT Chandigarh in the case of SmtCharu Agarwal & M/s Kalanidhi Jewellers Vs DCIT ITA No 310 & 311/Chd/2021 order dated 25/03/2022 The findings of Hon'ble ITAT is in para 10 of the order. Hon'ble ITAT after considering the decision of the Hon'ble Delhi High Court in the Motisons Jewellers Ltd.

case of Pr. CIT (Central)-3 V/s M/s Agson Global Pvt. Ltd. In ITA No. 68-73/2021 and various other High Courts and decision of Hon'ble ITAT Vishakhapatanam Bench on identical issue in the case of ACIT v/s Hirapanna Jewellers (2021) 128 Taxmann.com 29 held that the assessee was maintaining complete stock tally, the sales were recorded in the regular books of accounts and the amount was deposited in the bank account out of the sale proceeds, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified.

Sales made by the assessee to cover the cash deposited in the bank post demonetization, was sufficient source of the cash deposited i.e; the sales from the existing stock available with the assessee and was well explained, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified. - Decided in favour of assessee.

2) ITAT Hyderabad in the case of Shri Lateef Abdul Mohd, Vs ITO ITA No 501/Hyd/2021 order dated 10/06/2022 Held as under:-

20. I find sufficient force in above arguments made by the learned Counsel for the assessee. The month-wise cash sales and cash deposits made by the assessee in the Bank A/c are already reproduced in the preceding paragraphs. A perusal of the same shows that the cash sales made by the assessee during every month is substantial. Similarly, the cash deposit made by the assessee in the Bank A/c from April, 2015 to Nov.2015 and thereafter is also commensurate with the regular trend. It is not a case where the assessee in this particular period has made substantial cash deposits in the Bank A/c. Therefore, the lower authorities, in my opinion, have erred in disbelieving the submissions made by the assessee,

21. I find an identical issue came before the Hon'ble Delhi High Court in the case of Pr. CIT vs. Agson Global (P) Ltd (Supra). In that case, the Assessing Officer had made addition of Rs.99.04 crores to the total income of the assessee apart from other additions on account of cash deposits made during the demonetization period. In appeal, the learned CIT (A) restricted the addition of Rs.73.13 crores. The Tribunal deleted the additions sustained by the CIT (A) of Rs.73.13 crores in respect of cash deposits made with the Bank during demonetization period. In appeal by the Revenue, the Hon'ble High Court dismissed the appeal filed by the Revenue by observing as under:

"17.6. Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, we are of the view that there was nothing placed on record-which could have persuaded the Tribunal to conclude Motisons Jewellers Ltd.

that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in our opinion, the Tribunal

correctly found in favour of the assessee and deleted the addition made by CIT(A) of Rs.73.13 crores, under Section 68 of the Act."

22. Since the facts of the instance case are identical to the facts of the case decided by the Hon'ble Delhi High Court cited (Supra), therefore, I am of the opinion that the learned NFAC was not justified in sustaining the addition of Rs.30.00 lakhs made by the Assessing Officer in the Bank A/c during the demonetization period in old currency notes of Rs.1000. Accordingly, the order of the NFAC on this issue is set aside and the grounds raised on this issue are allowed.

3) 2021 (5) TMI 447 - ITATVisakhapatnam Asst. Commissioner of Income Tax, Central Circle-1 Visakhapatnam Versus M/S HirapannaJewellers (Vice-Versa)) (Copy at Case Law PB Page No. 181-184) Addition u/s 68 r.w.s 115BBE - assessee had deposited the sum in high denominations of specified bank notes (SBNs) post demonetization - CIT-A deleted the addition - HELD THAT:- The assessee produced the newspaper clippings of The Hindu, The Tribune and demonstrated that there was huge rush of buying the jewellery in the cities consequent to declaration of demonetization of 1000 and 500 notes on 08.11.2016. As cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House [2010 (4) TMI 1070 - DELHI HIGH COURT] and Vishal Exports Overseas Ltd. [2012 (7) TMI 1110 - AHMEDABAD HIGH COURT]

4) ITAT Delhi in Argon Global Pvt Ltd vs ACIT CC-28, Delhi ITA No 3741-3746/Del/2019 order dated 31/10/2019 case Law Paper Book Page No 258-321.

#### Finding of ITAT

1. Firstly, ITAT observed that both the Assessing Officer and Ld. CIT (A) erred in deeming the total cash deposits during the demonetization period (9th Nov 2016 to 30th Dec 2016) as Rs. 180.53 Cr instead of the actual deposits of Rs. 175.28 cr during the said period. While arriving at the said figure of Rs. 180.53 Motisons Jewellers Ltd.

crores, the Revenue Authorities had erroneously considered the total cash deposits of Rs. 5.25 crores (made on 31st Dec 2016) instead of the actual cash deposited during the demonetization period of Rs. 175.28 Cr.

2. Further, even out of Rs. 175.28 Cr, deposits of Rs. 63.41 crores were in new currency notes and non-demonetized old currency notes (Rs. 10/20/50/100). Thus, ITAT held the said amount of Rs. 63.41 crores could not be construed as cash deposited into the banks as a result of demonetization also the amount disclosed by the assessee in PMGKY scheme needed to be deleted from the addition.

3. With respect to the deposit of the cash on hand with the various bank, the explanation of the assessee that no such bank was accepting such a huge cash at one go and therefore assessee had to deposit the cash in various banks.

The assessee also submitted that that in the same bank assessee has deposited cash in its 2 different branches which itself proves that the banks were not accepting such a huge deposit.

Even otherwise, it was submitted correctly that merely because the cash holding as on 8/11/2016 was not deposited immediately cannot lead to conclusion that assessee did not have that cash.

It can merely lead to a suspicion but based on this addition cannot be made without making further enquiry and conclusively proving that assessee did not have that kind of cash available with it.

Even otherwise, if the assessee had to introduce his unaccounted money he would have deposited it at the first instance.

4. ITAT observed that assessee also filed its VAT returns, which are not found to be in variance with the accounting and tax records. Therefore, it cannot be substantiated that the assessee has backdated the transactions of the sale.

5. ITAT further observed that CBDT had issued various standard operating procedures under 'Operation Clean money'. ITAT opined that "...it is very important to note that whether the case of the assessee falls into statistical analysis, which Motisons Jewellers Ltd.

suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money."

6. In the result the addition of Rs. 73.13 crore sustained by Ld CIT(A) on account of deposit of demonized currency was deleted by Hon'ble ITAT.

In appeal by the Revenue, the Hon'ble High Court Pr. CIT (Central)-3 V/s M/s Agson Global Pvt. Ltd. In ITA No. 68- 73/2021 order dated 19-01-22 dismissed the bunch of appeals filed by the Revenue by observing in para 17.6 as under:

"17.6. Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, we are of the view that there was nothing placed on record-which could have persuaded the Tribunal to conclude that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in our opinion, the Tribunal correctly found in favour of the assessee and deleted the addition made by CIT(A) of Rs.73.13 crores, under Section 68 of the Act."

5) 2021 (1) TMI 837 - ITAT GAUHATINURUL ISLAM VERSUS ITO, WARD-2, NAGAON) (Copy at Case Law PB Page No. 185-186) Addition u/s 68 - Cash deposits of special Bank notes of 500/-

and 1000/- made during the demonetization period - According to Ld. A.R, a perusal of bank statement would reveal that there were regular bank deposits of cash and payment to the creditors (tea vendors) - HELD THAT:- As explained, the deposit of 8,75,000/- [ 2,00,000/- accepted by AO] cannot be said to be as result of non-genuine business receipt or a case of black money and therefore, in the peculiar facts narrated above, including the past history taken note of and the pattern of money deposited pre-demonetization and post that event as discussed, addition was not warranted and it is directed to be deleted; and further, profit embedded in 8,75,500/- need to be taxed @ 8% and it is ordered accordingly. Appeal of the assessee is partly allowed.

6) 2021 (12) TMI 599 - ITAT Bangalore Anantpur Kalpana Versus Ito, Ward - 1, Koppal.

Unexplained cash deposits in two bank accounts - Legal tender money in demonetization of currency - AO culled out, the deposits that was made of bank notes that were declared as not legal tender owing to demonetization of currency - HELD THAT:-

Motisons Jewellers Ltd.

Both AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. Addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation.

Assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. As in the case of CIT Vs. Associated Transport Pvt. Ltd. [1994 (1) TMI 18 - CALCUTTA HIGH COURT] on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. When cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE - See M/S HIRAPANNA JEWELLERS AND (VICE-VERSA) [2021 (5) TMI 447 - ITAT VISAKHAPATNAM] - thus the addition made is not sustainable and the same is directed to be deleted. Appeal of the assessee is allowed.

7) 2021 (2) TMI 737 - ITAT Gauhati Nilkantha Saha Versus ITO, Ward-Morigaon Unexplained cash credit u/s 68 - cash deposited during the demonetization period - AO acknowledges that the assessee has filed audited accounts and produced copy of the ledger of the sales and purchases along with copy of the books related to the purchase and sales made by the assessee without supporting bills and invoices - HELD THAT: -As brought to notice by the Ld. A.R that assessee is into dry fish business and his accounts are audited for the last seven (7) years. - the profit embedded in sales

amount has been accepted by the AO, so, question is whether separate addition is justified and whether this action of AO amounts to double addition of the same trading receipt.

Motisons Jewellers Ltd.

No doubt in such a factual scenario, it amounts to double addition. When the justifiability of separate addition is to be examined, it should be borne in mind that the AO is making a 'guess' about the source of demonetized currency. And the assessee is assailing the 'guess work' with an explanation which should be tested; and if the explanation given by the assessee is a plausible/probable from a traders/business man's/prudent man's angle/view, then that cannot be brushed aside by the AO, without disproving the explanation / facts or by giving cogent reasons.

Statement of bank accounts of assessee(3 bank accounts) it is noted that assessee has deposited in his three bank account (pre-demonetization) an amount to the tune of 2,38,94,037/- and during (Post-demonetization period) the assessee had deposited to the tune of 2,38,94,037/- and it is found that the total bank deposit tallies with the figure shown in trading account i.e., 4,76,78,990/- ( 4.76 crores). So taking into account all these facts and circumstances and demonetization being declared on the night of 8/9th November, 2016, it is noted that AO has accepted the invalid currencies to the tune of 11,08,796/- because it was shown by the assessee in his regular books maintained as on 08.11.2016. The assessee's explanation in respect of 12,41,704/- is that it is the amount which has been deposited by the sundry debtors as on 08.11.2016 which is found to be correct for the reason that the sundry debtors as on 08.11.2016 was to the tune of 14,93,120/- as is evident from the list of sundry debtors.

So on the same reasoning as adopted by the AO to have accepted 11,08,796/- (invalid currency notes) as genuine (trade receipt), I find no reason not to accept the explanation of assessee that 12,41,704/- was deposited by the sundry debtors reflected in the books as on 08.11.2016. And since the AO has accepted the sales/turnover of the assessee which were reflected in the audited books of accounts, as well as the explanation of assessee is supported by material on record, the AO/Ld. CIT(A)'s action of addition of 12,41,704/- cannot be countenanced. So on this factual finding the assessee's explanation regarding 12,41,704/- is plausible. And it is noted that the AO / Ld. CIT(A) / Ld. D.R could not disprove or controvert this fact and so it is accepted. In the aforesaid facts and circumstances, the assessee depositing invalid notes to the Motisons Jewellers Ltd.

tune of 12,41,704/- cannot be dis-believed as from any tainted source or termed as black money. So taking into consideration the peculiar over all facts and circumstances discussed supra, it is directed that the addition of 12,41,704/- be deleted - Appeal of the assessee is allowed.

8) Lalchand Bhagat Ambica Ram Vs. CIT (1959) 37 ITR 288 (SC)) (Copy at Case Law PB Page No. 187-199) which is set in somewhat similar back drop in connection with treatment of the encashment of high denomination notes by the assessee therein on the promulgation of High Denomination Bank Notes (Demonetization) Ordinance, 1946 as unexplained money on mere conjecture and surmise of the Revenue Authorities. The relevant facts of the said case are that the ITO in the course of the assessment noticed that the appellant therein had encashed high



denomination notes of the value of 2,91,000. The ITO asked for an explanation, which the appellant gave stating that these notes formed part of its cash balances including cash balance in the Almirah account. The appellant sought to prove the fact that the high denomination notes encashed by it formed part of its cash balances from certain entries in its accounts wherein the fact that moneys were received in high denomination notes had been noted. Portions of these entries to the effect that moneys had been received in high denomination notes were found by the ITO to be subsequent interpolations made by the appellant with a view to advance its case that the cash balances contained the high denomination notes encashed by it. The ITO rejected the appellant's explanation that the high denomination notes formed part of its cash balances and treated the sum of 2,91,000 as the appellant's secreted profits from business and included it in its total income and assessed the appellant. Before the Tribunal, the appellant stated that the said entries were made in sheer nervousness after the coming into force of the High Denomination Bank Notes (Demonetization) Ordinance, 1946, on 12th Jan., 1946, as the appellant did not know that it had specific proof in its possession of having the high denomination notes as part of its cash balances. The Tribunal held that there was no other reason to suspect the genuineness of the account books in which these interpolations were made. If the entire account books were fabricated to serve its purpose, there would be no need for the appellant to make interpolations between the lines already written in a different ink and in such an obvious manner as to catch one's eye on the most cursory perusal. The Tribunal, however, examined the cash book and taking into consideration all the circumstances which had been adverted to by the ITO held that the appellant might be expected to have possessed as part of its business cash balance of at least 1,50,000 in the shape Motisons Jewellers Ltd.

of high denomination notes on 12th Jan., 1946, when the Ordinance above-mentioned was promulgated. The Tribunal came to the conclusion that the nature of the source from which the appellant derived the remaining 141 high denomination notes of 1,000 each remained unexplained to its satisfaction. It accordingly ordered that the addition be reduced from 2,91,000 to 1,41,000. On the said facts, the Hon'ble Supreme Court held that-the Tribunal having held that books of assessee were genuine which showed a cash balance of 3,10,681 on the relevant date; the Tribunal could not have accepted the cash balance of 1,50,000 out of the value of high denomination notes of the value of 2,91,000 and treated the balance 1,41,000 as income from undisclosed sources. It was held that in doing so, The Tribunal had indulged in conjectures and surmises and acted without any evidence or upon a view of facts which could not reasonably be entertained. The relevant excerpts from the order of the Hon'ble Apex Court are reproduced hereunder:

If the entries in the books of account in regard to the balance in Rokar and the balance in Almirah were held to be genuine, logically enough there was no escape from the conclusion that the appellant had offered reasonable explanation as to the source of the 291 high denomination notes of 1,000 each which it encashed on 19th Jan., 1946. It was not open to the Tribunal to accept the genuineness of these books of account and accept the explanation of the appellant in part as to 1,50,000 and reject the same in regard to the sum of 1,41,000. Consistently enough, the Tribunal ought to have accepted the explanation of the appellant in regard to the whole of the sum of 2,91,000 and held that the appellant had satisfactorily explained the

encashment of the 291 high denomination notes of 1,000 each on 19th Jan., 1946. [para 14] The Tribunal, however, appears to have been influenced by the suspicions, conjectures and surmises which were freely indulged in by the ITO and the AAC and arrived at its own conclusion, as it were, by a rule of thumb holding without any proper materials before it that the appellant might be expected to have possessed as part of its business, cash balance of at least 1,50,000 in the shape of high denomination notes on 12th Jan., 1946,-a mere conjecture or surmise for which there was no basis in the materials on record before it. [para 15] Unless the Tribunal had at the back of its mind the various probabilities which had been referred to by the ITO it could not Motisons Jewellers Ltd.

have come to the conclusion it did that the balance of 1,41,000 comprising of the remaining 141 high denomination notes of 1,000 each was not satisfactorily explained by the appellant. [para 18] If the entries in the books of account were genuine and the balance in Rokar and the balance in Almirah on 12th Jan., 1946, aggregated to 3,10,681-13-9 and if it was not improbable that a fairly good portion of the very large sums received by the appellant from time to time, say in excess of 10,000 at a time, consisted of high denomination notes, there was no basis for the conclusion that the appellant had satisfactorily explained the possession of 1,50,000 in the high denomination notes of 1,000 each leaving the possession of the balance of 141 high denomination notes of 1,000 each unexplained. Either the Tribunal did not apply its mind to the situation or it arrived at the conclusion it did merely by applying the rule of thumb in which event the finding of fact reached by it was such as could not reasonably be entertained or the facts found were such as no person acting judicially and properly instructed as to the relevant law could have found, or the Tribunal in arriving at its findings was influenced by irrelevant considerations or indulged in conjectures, surmises or suspicions in which event also its finding could not be sustained. [para 19] As the conclusion of the ITO was thus either perverse or vitiated by suspicions, conjectures or surmises, the finding of the Tribunal was equally perverse or vitiated if the Tribunal took count of all these probabilities and without any rhyme or reason and merely by a rule of thumb came to the conclusion that the possession of 150 high denomination notes of 1,000 each was satisfactorily explained by the appellant but not that of the balance of 141 high denomination notes of 1,000 each.[para 20] Therefore, the Tribunal in arriving at the conclusion in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and the Court is entitled to interfere. [para 23] Motisons Jewellers Ltd.

9) Hon'ble Supreme Court in the case of Mehta Parikh & Co. V/s. CIT (1956) 30 ITR 181 held as under:.) (Copy at Case Law PB Page No. 200-207) "The finding of the Tribunal that high denomination notes of the value of 30,000 represented the concealed profits of the appellant is not supported by any evidence, and is, in consequence, erroneous in point of law and liable to be set aside. The accounts of the appellant have been accepted by the Tribunal as genuine, and it is impossible to say, having regard to the case balance shown therein, that notes in question could not have been included therein. The Tribunal observes that it is unlikely that so many high denomination notes would have been held as part of the cash on hand for a such a large number of

days. That, no doubt, is highly suspicious; but the decision of the Tribunal must rest not on suspicion but on legal testimony."

10) Lakhmichand Baijnath V. CIT [1959] 35 ITR 416 (SC).) (Copy at Case Law PB Page No. 208-211) Amount credited in business books can normally be presumed as business receipt. When an amount is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business

11) Hon'ble Allahabad High Court in the case of Sri Ram Tandon Vs. CIT (1961) 42 ITR 689 ordained as under:(Copy at Case Law PB Page No. 212-216) "It appears extremely difficult to appreciate how the Tribunal thought it necessary or proper to make an estimate of 35 notes at 1,000 each to have been contained in the cash balance. The Tribunal has given no reason whatever for its finding that the assessee possessed 35 notes of 1,000 each on the day the Ordinance was promulgated. This evidently is an arbitrary expression of its own guess, which cannot be accorded the status of a finding. Equally arbitrary is the other finding that the balance of 10 notes was from an undisclosed source. After having heard counsel for the Department and after giving best consideration to the matter one is quite unable to see any reason or basis for the so called finding recorded by the Tribunal that the assessee was in possession of 35 notes on the day the Ordinance was promulgated or that 10 notes were from some undisclosed source. These cannot be recognised as finding at all. The assessee's business was not one in which large amount of petty notes might have been necessary for the purpose of business, and keeping money in large notes is evidently more convenient for counting, for making payments and for other purposes and no material has been placed to show that the explanation offered by the assessee was one which was Motisons Jewellers Ltd.

inherently improbable or one which could not be accepted. The so-called estimate made by the Tribunal was based on no reason and was a mere guess. In fact there was no justification in the circumstances of the case for making an estimate at all. The assessee had a large cash balance which could very conveniently include the 45 high denomination notes encashed by him. The explanation offered by the assessee was not unreasonable and nothing has been said which could justify its being rejected as unreasonable. On the other hand the so-called estimate by the Tribunal is based on no reason and is purely arbitrary and cannot be upheld as legal."

12) Hon'ble Allahabad High Court in the case of Kanpur Steel Co. Ltd. Vs. CIT (1957) 32 ITR 56 (All)opined as under:(Copy at Case Law PB Page No. 217-219) "when the assessee-company had given an explanation which was reasonable, the IT authorities could have been entitled to treat the sum of 32,000 as income from undisclosed sources only if there was some other material from which such inference could have been drawn. No other material has been mentioned by the Tribunal in their appellate judgment or in the statement of the case. It further appears that the Tribunal, in holding that seven high denomination currency notes of the value of 7,000 only could form part of the cash balance and the remaining currency notes could not do so, were acting on their surmises for which there was no basis and which had no support from any material on the record. In these circumstances, it must be held that there was no material for holding that the sum of 25,000 being the value of high denomination currency notes exchanged in pursuance of the High Denomination

Bank Notes (Demonetisation) Ordinance, 1946, represented income of the assessee company from some undisclosed sources."

13) Madhuri Das Narain Das Vs. CIT (1968) 67 ITR 368 (All)(Copy at Case Law PB Page No. 220-221) Section 4 of the Income-tax Act, 1961 [Corresponding to section 3 of the Indian Income-tax Act, 1922] - Income - Chargeable as - Assessment year 1947-48 - Assessee encashed 28 high denomination notes of Rs. 1,000 each after issuance of High Denomination Bank Notes (Demonetisation) Ordinance, 1946 - When asked to explain source of said notes, assessee submitted that same had come out of closing cash balance of its business - ITO disbelieved explanation and treated entire amount as assessee's income from an undisclosed source - Tribunal accepted that 22 notes could have come out of cash balance of Rs. 38,000 and odd, and remaining 6 notes could not have Motisons Jewellers Ltd.

formed such balance - Whether finding of Tribunal, being based upon surmises and conjectures, could not be upheld - Held, yes

14) K.S. Kannan Kunhi Vs. CIT (1969) 72 ITR 757 (Copy at Case Law PB Page No. 222-224) Thus we find that the Income-tax Officer and the Appellate Assistant Commissioner also have not considered the acceptability or otherwise of the assessee's explanation, except making an assertion that it was not acceptable. The other important aspect, namely, whether, on the facts and in the circumstances of the case, it should be inferred that these amounts constituted income of the previous year, though the explanation offered by the assessee was not acceptable, did not receive the consideration of the Appellate Tribunal or the subordinate authorities. Except some agricultural properties, whose annual income came to about Rs. 6,000 according to the assessee, it had no known source of income in India, until it started the toddy business on August 17, 1950. Nor is there any material in the case even to raise a reasonable suspicion that the assessee indulged in any activity of an income-earning nature in the accounting year or in prior years. In these circumstances, a finding that the sum of Rs. 60,518 found with the assessee must be its income from undisclosed sources during a period of about seven and a half months prior to August 17, 1950, appears a little preposterous. Whatever it may be, the explanation offered by the assessee was not on the face of it improbable, though it is entirely a matter for the fact-finding authority to accept it or not. But if the Appellate Tribunal rejects the explanation without considering its acceptability in the light of the facts and circumstances of the case, or it rejects the explanation without stating any grounds whatsoever, or upon a view of facts which could not reasonably be entertained by any person acting judicially, the case would fall within the principle laid down by the Supreme Court in Mehta Parikh & Co.'s case (supra), and the finding of the Tribunal would not be valid. In our view, the same is the position in this case; the addition of Rs. 60,813 as the income of the assessee from undisclosed sources was not valid or justified.

15) Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72 ITR 194 (SC) (Copy at Case Law PB Page No. 225-228) that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.

16) Hon'ble High Court of Allahabad in the case of Gur Prasad Hari Das vs Commissioner of Income Tax [1963] 47 ITR 634 (Allahabad)(Copy at Case Law PB Page No. 229-231) Motisons Jewellers Ltd.

Section 143 of the Income-tax Act, 1961 [Corresponding to section 23(3) of the Indian Income-tax Act, 1922] - Assessment - Addition to income - Assessment year 1947-48 - On demonetisation of high denomination notes assessee encashed 21 such notes, part of which were held, by Tribunal as his income from undisclosed sources on ground that same could not be satisfactorily explained by assessee - Whether, prima facie value represented by high denomination notes in possession of assessee must be presumed to be part of his cash balance and if department wanted to treat such value as his concealed income from some undisclosed sources, it was for department to establish that fact on basis of material in their possession - Held, yes - Whether in view of fact that Tribunal accepted assessee's case at least with regard to eight notes and further that it made its own estimate of cash balance of assessee confining some proportion of high denomination notes implying thereby possibility of assessee receiving such notes during course of his business, Tribunal committed an error in not accepting assessee's explanation in toto in regard to all notes - Held, yes - Whether, in view of aforesaid, there was no material before Tribunal for holding that assessee could not have been in possession of any of remaining thirteen notes also and that those notes or any part of them represented income of assessee from some undisclosed sources - Held, yes

17) Hon'ble High Court of Bombay in the case of Narendra G Goradiavs Commissioner of Income Tax [1998] 101 Taxman 571 (Bombay)/[1998] 234 ITR 571 (Bombay)/[1999] 154 CTR 365 (Bombay)(Copy at Case Law PB Page No. 232-237) Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 1979-80 - In relevant period assessee had tendered notes of Rs. 1000 denomination valuing Rs. 2 lakhs for encashment - There was no dispute about source of money nor about fact that there was sufficient balance on date of deposit - Assessing Officer, however, made additions of part of amount for want of details of receipts of some of high denomination notes - Whether there was no justification for adding a portion of amount tendered by assessee for encashment of high denomination notes as income of assessee from undisclosed sources for alleged failure of assessee to furnish source of acquisition of amount in such notes - Held, yes

18) CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009 decided by Gujarat High Court on 03.07.2012(Copy at Case Law PB Page No. 238) In the facts of above case the assessee was an exporter. The issue was regarding sale of Rs.70 lacs included in turn-over which was more than 500 crores. The assessee had claimed Motisons Jewellers Ltd.

deduction u/s 80HHC of the Act. On the basis of information received by the Assessing Officer from investigation he considered the entry for export of 70 lacs as bogus. He denied benefit u/s 80HHC of the Act. Further, he made addition of Rs. 70 lacs in the income u/s 68 of the Act. It was held that once the assessee has already included the amount of sale of Rs. 70 lacs in Profit and Loss Account and determined the income on that basis no further addition could be made u/s 68 of the Act as it would tantamount to double taxation of same income. The Assessing Officer could only reject claim u/s 80HHC of the Act.

19) CIT v/s. Kailash Jewellery House ITA No. 613/2010 decided by Delhi High Court on 09.04.2010(Copy at Case Law PB Page No. 239) In the facts of above case cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not establish with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that sum of Rs.24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The Hon'ble High Court dismissed the appeal filed by the Department. Promulgated.

20) 2021 (10) TMI 1139 - ITAT DELHI Neeru Jain Versus Ito, Ward-67 (4) Delhi Addition u/s 69A - Cash deposits during the demonetization period - Assessee submitted that the savings were out of accumulated savings in the form of pin money and minor cash gifts received by her from her parents and in-laws on the occasion of birthdays, anniversaries etc. - HELD THAT:- CIT(A) grant relief to 50,000/- and upheld the addition to the extent of 2,00,000/-. Before us, assessee has submitted that the deposits to be out of accumulated savings and out of the cash gifts received by her on the occasion of birthdays and anniversaries. It is also a fact that assessee's husband is an income tax payer working for an MNC.

In view of the CBDT Circular vide Instruction No. 03/2017 dated 21st February 2017 and relying on the decision of SMT. UMA AGRAWAL BABA KAPUR SUNARAN KA MOHALLA VERSUS I.T.O -1 (3) GWALIOR, M.P. [2021 (6) TMI 712 - ITAT Motisons Jewellers Ltd.

AGRA], the explanation of the assessee about the source of cash deposits cannot be brushed aside without there being any evidence to the contrary.- Decided in favour of assessee.

21) 2021 (9) TMI 1192 - ITAT VISAKHAPATNAM DY. Commissioner Of Income Tax Circle-3 (1) Visakhapatnam Versus Sri Jaya Prakash Babu Valluri And (Vice-Versa) Cash deposits made during demonetization period, which was added back to income u/s 69A - HELD THAT:- CIT(A) observed that the assessee is maintaining regular books of accounts and the deposits were made out of the book balances and therefore, following the decision of Karthik Constructions [2018 (3) TMI 39 - ITAT MUMBAI] the Ld. CIT(A) held that there is no case for making the addition, accordingly deleted the addition.

22) 2021 (9) TMI 627 - ITAT DELHI Muon Computing P. Ltd., Versus Ito, Ward-17 (2) , New Delhi.

Addition of high cash in hand - high cash on hand disclosed in the balance sheet as compared to the preceding year - HELD THAT:-Revenue has not brought any material suggesting that the withdrawal made by the assessee were utilized for making payments. It is also not brought on record that the amounts so withdrawn from the bank account was utilized for any other undisclosed purposes - CIT(A) observed that despite having sufficient cash in hand, the assessee withdraw the

amount. It is correct that the assessee has withdrawn higher amounts than the immediate preceding years but that cannot be sole reason for making addition purely on the basis of suspicion. We failed to understand the reasoning of the Assessing Officer that the amount was withdrawn to justify the cash deposits during demonetization period i.e.between 09.11.2016 to 30.12.2016. It is also seen that the cash was withdrawn much prior to such event. So far observation regarding sharp increase in payable expenses is concerned, there is no finding by the Assessing Officer that such expenses are bogus - addition has been made purely on the basis of suspicion. Such action of authorities below cannot be affirmed - Decided in favour of assessee.

4.3.16 Drawing inference from the above cited cases, in the instant case, the assessee furnished a reasonable explanation with regard to the nature and source of the cash deposited in banks in demonetized currency which was not found to be false by the Department. The explanation offered by the assessee was in line with the trend of cash deposits in the past years which was accepted by the Department in the assessments framed u/s 143(3) of the Act in the past and future.

Motisons Jewellers Ltd.

No material was brought on record by the Revenue Authorities to draw an inference that the explanation offered by the Assessee was incorrect or unreasonable or that the impugned sum represented income of the assessee from undisclosed sources as against the entries recorded in the audited books of the Assessee. The cash deposited in banks against from the explained source could not be treated as undisclosed income of the Assessee u/s 68 without bringing on record any credible evidence/material in support of such allegation merely on the basis of surmises and conjecture of the Id. AO.

4.3.17 In view of above submission it is submitted that entire sales of the assessee are supported by the bills, duly verifiable from books of accounts & records and the same is completely genuine. The Id. AO did not specify any defects in the sale and the sale is in line of its own previous history of the assessee. The Id. AO could not bring any single evidences on record to prove his allegation to be correct. Further all the surrounding circumstances and human probability of this much cash sale is also in favour of the assessee. The assessee submitted the best possible details/information/documents/explanation to present its case before Id. AO and as explained in forgoing paras no specific defects had been pointed out by Id.AO therein.The entire assessment order is based on presumption and assumption by twisting the data and drawn the conclusion therefore as per his own whims just to make the huge addition. There is no abnormal rise in the cash sales made by the assessee. The sales are genuine and supported by the proper invoices and properly shown in the VAT return, which also accepted by the VAT authorities, therefore, the same cannot be considered as fabricated or manipulated transactions.

It is further relevant to mention here that Id.AO alleged that cash deposited in bank account in demonetized currency is undisclosed income of the assessee which deposited under the garb of cash sales. In this regard it is submitted that there is no evidence with Id. AO to support this allegation. The assessee is having only source of income from business of Jewellery and except to that the assessee is not having any other business.The Id.AO also could not prove the source of generation of

undisclosed income. Therefore, merely on the basis of presumption and assumption no such addition can be made in total income of the assessee.

Thus, addition u/s 68 of Income Tax Act, 1961 is completely wrong, unjustified, perverse and not according to the settled principal of law, therefore the same deserves to be deleted and Ld CIT(A) has rightly deleted the addition.

Motisons Jewellers Ltd.

12. The ld. AR of the assessee in addition to the written submission vehemently argued that the addition made by the assessing officer was with preset of mind and has ignored all the information that he has called for and submitted by the assessee in the assessment proceedings in all the desired format. The ld. AO ignored all the supporting documents and considered the cash deposited into bank account as unexplained credit u/s. 68 of the Act. The ld. AR of the assessee explained and dealt all the issues raised by the AO in the hearing process the same is reiterated here in below:

Issue raised by AO	Submission or reply of the assessee
On Perusal of the submission, it is	The ld. AR of the assessee

found that, on a single day assessee explained that this issue is already made cash sales aggregating to Rs. considered by the ld. CIT(A) at para 9,79,23,724/- through more than 725 6.2 page 46 of her order. The ld. AR invoices. The cash sales of Rs. of the assessee further explained 9,79,23,724/- on single day does not by way chart submitted before the seems genuine following the past AO too where in the comparison of year's trends. cash sales made by the assessee was explained and he submitted When the cash of corresponding that in Nov 2014 total cash sales months of previous years are were of Rs. 15.51 cr and in Nov. compared, it was noticed that the 2015 Rs. 19.17 cr., whereas, cash cash sale during the month of sales in Nov 2016 was of Rs. 13.55 October 2016 was Rs. cr only which is lessor then Nov 18,81,89,611/-, during October 2015 2014 & 2015. In terms of % cash it stood at Rs. 11,66,19,434/- and sales to total sale, it was 12 % & 17 October 2014 at Rs. 17,60,14,563/- . % in Nov 2014 & 2015 respectively, Therefore, during the year under whereas the same is 13 % of total consideration cash sales during sales in this period in question only. October month increased by 1.61 The revenue could not pin point any times compared to October 2015 fault on these cash sales Motisons Jewellers Ltd.

and increased 1.07 times compared comparison provided and thus, we to October 2014 do not find any absurd result and there was no abnormal rise in over all cash sales in the sales results of the assessee.

The case sales made during October The ld. AR of the assessee 2016 was 18% and November 2016 explained from the comparison of was 13% out of total cash sales chart that cash deposited in the made during the financial year 2016- month of Oct & Nov

17. The cash sales made in two 2014-15 Rs. 40,72,00,000 months is higher compared to cash 2015-16 Rs. 44,62,00,000 sales made in remaining 10 months 2016-17 Rs. 35,94,68,500 of that



year. Further when the trend of cash sales is compared to Above data proves that in fact the previous years it was noticed that in result of cash deposit has reduced October 2015 cash sales was just looking to the past trend even in the 11% of the total sales and in October demonetization period. Sales for oct 2014 it was 13% compared to total alone cannot be compared. Sales of sales. jewellery have direct nexus with Diwali festival. In 2014 and 2016 Diwali was in Oct and in 2015 Diwali was in Nov.

The ld AR explained that in the year 2014 & 2016 the sale of the October month was higher than sales of same month in the year 2015. Correspondingly the sale of November month of year 2014 & 2016 was lower than to sale made in November-2015. (APB 65) Therefore, the combined sales for Oct and Nov 2014 & 2015 should be compared with the combined sales of 2016. (APB 87) Further cash realized against/for the sale in the month of October-16 was already deposited in the bank a/c before demonetization, therefore, the comparison of data of sale of October-2016 is not relevant in this case.

Further, Assessee failed to furnished The assessee has kept record for Motisons Jewellers Ltd.

the details of the persons such as all the sales exceeds Rs. 2 lac full name, address and PAN to where in details of PAN and whom cash sale was made during address were collected and for the the demonetization period. below Rs. 2 lacs it is not mandatory to maintain such records. The revenue did not controvert this legal position.

Further, it is found that the assessee The ld. AR of the assessee has revised its quarterly VAT return submitted all the four quarter for the AY 2017-18 wherein the returns were revised and not for any turnover of the assessee has been particular quarter. If this contention significantly increased The revision is accepted then it will also lead to a of the VAT return related to the pre presumption that the assessee did demonetization period further not made any composition sales for strengthen the fact that the assessee whole of the year. The assessment company has booked bogus cash of VAT were completed and placed sale for the period before on record where in the revision demonetization which were accepted(APB 139-147). The subsequently increase the sale of ld. AR of the assessee further the assessee and to show the sale submitted the copy of the receipted as genuine the assessee revised its VAT taxes paid challan for all three VAT return for First 3 quarters. The quarters at PB page 110 where in it assessee also revised the VAT is explained that all the three return of 4 quarter however the quarters respective tax have been turnover was not disturbed which paid before the demonetization and shows that the assessee has revised the assessee has not foreseen this the Return to duped the Department. event and their payment it self The whole excise made by the proves that the revision of order assessee indicate that the assessee though the tax paid in advance was has been indulged in booking of just a procedure lapse and since bogus cash sales the tax has already been paid related to this composition the merely the return revised cannot be used against the assessee. Thus, there is no force in the arguments of the revenue.

The assessee has shown purchase In the proceeding before CIT(A) from various concerns during the assessee placed on record the period before demonetization. To various documents which were verify the genuineness of the confronted to the AO also and the purchase an enquiry was conducted

ld. AO has rejected this addition u/s 133(6) of the Act and notice evidence merely on the fact the were issued on test check basis same were not produced before the which includes entity Shri Mahesh proceeding with him. The ld. AR of Soni Prop of M/s Paras Gems & the assessee further submitted that Jewellers from whom the assessee the notice were issued at residence Motisons Jewellers Ltd.

has shown purchase of Rs and not at the business address. 110561454/ during month of The assessment records of these October and November of the year. parties were placed on record and purchase of the assessee were The notice was issued issued considered as sales of that party in through ITBA as per detail provided the scrutiny assessment. Not only by the assessee himself such as that the assessee has made a sales PAN: GNMPS2050H and address as of Rs. 3,40,61,393 with same party provided by the assessee himself. and the same is accepted. This The same was also sent through itself shows that the AO is blowing speed post. However, the notice so hot and cold in same stream and sent to the entity returned back this dual analogy cannot be applied unserved. Further, no reply was for the same party. All the payment either received through ITBA. These are by an account payee cheque, fact reveals that the purchase shown parties are assessee to direct and from M/s Paras Gems & Jewellers is indirect tax relevant proof the same not genuine and as the entity not were placed on record. The ld. AR found exist at the given address and of the assessee relied on various PAN detail. judgements stating that purchase cannot be treated as non-genuine for the sole reason that the notice returned unserved or party not found. The confirmation was filed by the assessee and the copy of the notice issued to the party were requested but not given to the assessee to make necessary compliance The assessee has also given a stock statement including and excluding the purchase and it did not affect the stock position viz viz to sales made.

The assessee claimed that the cash As rightly confirmed by the ld. amount deposited during the period CIT(A) that once the sales is of demonetization includes amount considered as genuine the receipt of Rs. 2596480/- realized from cannot be doubted. The assessee debtors just before demonetization has shared the details of invoices between 03-11-2016 to 08-11-2016. and the AO has merely alleged that The assessee was asked to furnish the same is without PAN and the detail such as full name, address address. The calls were made to and PAN no. of such persons. very few person and nominal value However, no such details were of sales and all the cell number provided by the assessee as such given were active. No party has and only contract number and name categorically denied about the were provided. purchase that they have made so the strata selected was very small Motisons Jewellers Ltd.

As no details of address was and thus based on that strata the provided. Hence, in these sales made by the assessee cannot circumstances to verify the be disbelieved and recorded as genuineness of the debtors debtors, whose sales is already telephone calls were made to some considered by the revenue. It is of the debtors on test check basis customer who are not willing to from the landline phone of the office share their private information such of undersigned having no. as PAN, address etc. and assessee 01412227574. In the verification the can not force the customer to debtors fail to recognize such provide such information. purchase from the assessee.

13. The ld. AR of the assessee further submitted that out of total cash of Rs. 12,17,48,500/- Rs. 12,00,00,000/- was deposited on the first working day of bank after announcement of demonetization i.e. on 10.11.2016 that it self proves that money has been sourced from the sales made and accounted in the books of account. To substantiate the cash sales, bill wise details of cash sales (APB page 75 to 79) and receipt no wise details of cash received from the period from 03.11.2016 to 08.11.2016 were submitted (APB 148 to 160). Monthly summary of stock register were submitted (APB page 166 to 177) day to day stock register (APB 178 to 183), copy of sales ledger for the period Sept 2016 to December 2016 (APB 63 to 71 ), copy of cash book (APB 63 to

71), details of debtors from whom cash received (APB 161 to 162) Copy VAT return (APB 97 to 109), copy of CST and VAT Motisons Jewellers Ltd.

assessment order ( APB 139 to 147). Based on all these documents the assessee substantiated their deposits of cash into the bank account is on account of sales proceeds during the normal course of business of the assessee and therefore, substantiated its claim by filling as much as 4000 pages. There is no single mistake that has been pointed out by the AO while verifying the book results along with the other related information including quantitative records. Not only that the assessee substantiated its claim for sale of goods by way of comparison of past trends of cash sales and cash deposited in past which is also placed on record and not contradicted these basic facts related to the cash sales and cash deposited in to the bank account. As regards the stock position during the period of demonetization, the appellant has submitted that the opening stock of pure gold as on 01.11.2016 was 13385.100 grams + 746.330 grams = 14131.43 grams. There was no purchase or sale of pure gold in between 01.11.2016 to 10.11.2016. The first sale is to M/s S.K. Jewellers of 4000 grams on 11.11.2016 over which the AO has no objection or dispute. Further this sale is through banking channel. We find that out of the total SBN's deposited during the demonetization period, Motisons Jewellers Ltd.

an amount of Rs. 12 Crores was deposited on 10.11.2016.

Thereafter the purchases of 13000 gram were made from M/s Girdhar Jewellers Pvt. Ltd. on 15.11.2016, which has no concern with the SBN deposited by the appellant. As regards the possibility of making sales invoice ld. AR of the assessee submitted that regular billing of the assessee is ranging from 100 to 200 per day there are 91 employees for both the show room, all were available and time calculated for 3 hours and not four hours (8+4) then even in 3 hours average 22 minutes can be given to single person [  $725/90 = 8$  person can be handled in hours a single men and  $60 \times 3 = 180/8 = 22.5$  minutes available for a customer and that time is sufficient time to attend the 725 person if believe that in a day there is no other sale also in day. This cannot be considered as impossible task for the assessee having stock, place to display and parking availability this fact is also not disputed. The average sales of the assessee in a year is around 200 cr. and looking to strength of the assessee the cash sales which in comparison to past year cannot be considered as non-genuine which supported by availability of stock, staff strength, past history and giving all the required details in form of value and quantity and in all the records Motisons Jewellers Ltd.

not a single defects is observed by the ld. AO. Not only that the ld.

AR of the assessee shared the new paper report where in it has been reported that on night of the demonetization 15 tonne of gold ornaments were sold. The ld. AR of the assessee cited a circular issued by the CBDT no. 14 of 1955 dated 11.04.1955 where in the board has taken a view that the officers of the department must not take advantage of ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable was particularly in the matter of claiming and securing reliefs and therefore, the ld. AR of the assessee submit that the revenue should assist the assessee and not to take benefit of a situation.

The ld. AR of the assessee strongly opposed of the reasoning that the VAT is revised to take the benefit of the demonetization is in fact incorrect finding and the tax related to the revision of VAT is already paid by way of challans as listed in a chart of APB page

110. The assessment records of the VAT were submitted where in the nothing found objectional related to the sale recorded by the assessee. The ld. AO has not made any independent enquiry except calling only for 6 customers out of list of 250 sundry debtor list of person filed at assessee paper book page 161 to 162. As Motisons Jewellers Ltd.

regards the purchases made from the two parties which the ld. AO is disbelieving and for that the ld. AR of the assessee submitted that for these purchase they have submitted invoice, ledger account, PAN Number, proof that the payments were made regularly to those parties and the same is by an account payee cheque. As regards the notice reply not received the assessee was never given an opportunity in the matter. In case of Paras the same of party is Rs. 130 cr and his case was also completed u/s.

143(3) of the Act. As regards the second purchase made from M/s.

Girdharm Jewelers Private Limited information were supplied in response to notice u/s. 133(6). The only reason given by the AO in not believing the purchase is that the party has given the goods on credit. He has not seen the past history and turnover made with this party. Thus, the contentions of the revenue are for the name sake only and has no basis to reject the books based on frivolous reasons.

14. We have considered the rival contention and perused the orders of the authorities and the material available on record arguments advanced by both the parties and also gone through Motisons Jewellers Ltd.

the judicial decision relied upon by both the parties to drive home to their contentions. The assessee is a limited company and deriving income from manufacturing and trading of jewellery. The books of assessee's are audited by the independent Chartered Accountant and copy of audit report and statement of profit and loss account is filed by the assessee company. It is noted from the record that the case of the assessee was taken up for scrutiny assessment u/s 143(3) on the basis of CASS and desired information by the AO were submitted by the assessee from time to time. After completion of assessment the AO vide his order dated 29-12-2019 assessed the income of the assessee at Rs.16,45,24,988/- as against return income of Rs.5,37,53,418/- .

During the course of assessment proceedings, the AO rejected the books of account of the assessee by applying the provisions of Section 145(3) and estimated the net profit rate of 2.59% being average Net Profit of last three years and applied the same on the sales of Rs.1,96,92,45,899/- i.e. to say Rs.2,09,09,94,399 - Sales as per books and Rs.12,17,48,500 - Cash deposited in Bank. It is further noted that the AO reduced the amount of Rs.12,17,48,500/-

deposited in the demonetization currency which was against sales, Motisons Jewellers Ltd.

realization from debtors and advances against sales, out of total sales of Rs.2,09,09,94,399- declared by the assessee. Hence, the AO computed the net profit of the assessee at Rs.5,10,03,468/- as against Rs.5,19,80,398/- declared by the assessee. It is also noted that the assessee had deposited the amount of Rs.12,17,48,500/-

in the demonetized currency which was out of cash balance available with the assessee from sales made by it, amount realized from sundry debtors and advance received against sales which the AO treated as unexplained cash credit of the assessee u/s 68 of the Act and added the same to the income of the assessee and thus taxed it as per the provisions of Section 115BBE of the Act. In first appeal, the Id. CIT(A) vide para 6.2 of his order partly deleted the addition made by the AO by observing as under:-

i) deleted the addition of Rs. 12,17,48,500/- made by Id. AO under section 68 of the Act alleging the cash deposited in bank a/c in demonetized currency as unexplained cash credit.

ii) Upheld the rejection of books of accounts and also upheld the estimation of NP rate of 2.59% as against NP rate of 2.36% declared by the assessee.

iii) Initially in the original order dated 04.02.2022 the Id. CIT (A) confirmed the addition of Rs. 31,53,287/-, which by passing the rectification/corrigendum order dated 11.07.2022 modified and sustained Rs. 47,72,297/- by estimating the net profit of Rs. 5,41,56,755/- (by applying the NP rate 2.59% on declared turnover of Rs. 2,09,09,94,399/-) as against Net profit of Rs. 4,93,84,458/- declared by the assessee.

Motisons Jewellers Ltd.

15. We also find that the Department has raised the solitary ground for deletion of addition of Rs.12,17,48,500/- made by the AO by applying the provisions of Section 68 and taxed as per provisions of Section 115BBE of the Act. All the points or allegation noted by the Id. AO is duly considered and discussed by the Id.

CIT(A) while dealing with the appeal of the assessee. The revenue did not pin point which of the findings of the Id. CIT(A) is incorrect and against the facts placed on record by the assessee. The Id.

AR of the assessee during the course of hearing taken us to all the points raised by the AO so as to prove that the contention raised by the AO to prove that the sales made by the assessee company as on the date of demonetization is correct and possible looking to the strength of staff, space of demonstration and parking and the considering availability of stock on hand as proved that the sales made by the assessee company is genuine sales recorded in the books of account. All the details required to prove the sales made by the assessee were provided in the assessment proceedings.

As regards the receipt of the cash from the customer the ld. AR of the assessee relied upon the findings of the jurisdiction high court judgement in the case of Smt. Harshil Chordia Vs. ITO reported at Motisons Jewellers Ltd.

298 ITR 349 (Rajasthan-HC). In this case the Jurisdictional Hon'ble High Court have held that So far as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise.

We, therefore, hold that no addition was required to be made in respect of Rs. 6,98,000, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.

16. Thus, the fact of the case on hand is similar to the jurisdictional high court decision cited by the ld. AR of the assessee. The ld. AR of the assessee also relied upon the co-

ordinate Jaipur ITAT decision also on the issue and the revenue not prove the sale made by the assessee which is executed after giving the goods to the customer, duly reflected in the invoice issued, assessee having sufficient stock in the books, sales is duly reflected in the books of accounts supported by payment of VAT.

Therefore, the contention of the revenue based on the facts and circumstance of the case is not accepted and we see no reason to find any fault in the detailed reasoned finding in the order of the ld.

Motisons Jewellers Ltd.

CIT(A). Thus, we sustain the order of the ld. CIT(A) and based on these observations the appeal of the revenue in ITA NO.

161/JPR/2022 stands dismissed.

17. Now, we take up assessee's appeal in ITA No. 178/JP/2022 for the A.Y. 2017-18. The assessee has taken following grounds of appeal:-

"1. On the facts and under the circumstances of the case and in law the ld. AO erred in rejecting the books of account of the appellant by invoking the provision of section 145(3) of the Income Tax Act, 1961 and CIT(A) further erred in sustaining the rejection of books of accounts for the sole reason that amount received from debtors and advance from customers, which deposited into bank in demonetized currency, was not found verifiable.

2. On the facts and the circumstances of the case and in law the ld. CIT(A) erred in estimating the net profit of appellant Rs. 5,41,56,755/- by applying the net profit rate & 2.59% on declared turnover of Rs. 2,09,09,94,399/- and thereby confirming the addition of Rs. 47,72,297/- .

3. The Appellant prays for leave to add, to amend, to delete, to modify the all or any grounds of appeal on or before the hearing of appeal."

18. The ld. AR of the assessee in support of the grounds raised by them has filed a detailed submission and the same is reiterated here in below :

Submission on Grounds of Appeal raised by assessee

1. The assessee raised two grounds of appeal. In the first ground of appeal, the assessee has challenged the rejection of books of accounts Motisons Jewellers Ltd.

and the second ground of appeal is regarding confirming of addition of Rs.47,72,297/- by CIT (A) by estimated the net profit. Since both ground of appeal is interconnected to each other and born out from the common finding, therefore in the written submission the same are commonly dealt with.

2. The ld. AO rejected the books of account of assessee basically for following reasons: -

i) Non genuine purchases from Paras Gems and Jewellers and therefore, stock register prepared after thought and does not disclose true income of the assessee.

ii) Non verified cash sales during the period from 03.11.2016 to 08.11.2016.

iii) The assessee declared total turnover of Rs. 209,09,94,399/-. The assessee deposited Rs. 12,17,48,500/- in bank in demonetized currency, which was part of the above turnover. The ld AO reduced the declared turnover from the amount deposited in bank in demonetized currency. The ldAO estimated the net profit rate of assessee 2.59%, being average NP of last three years and applied the same on the sales of Rs. 1,96,92,45,899/- (Rs. 209,09,94,399/- (Sales as per Books) - 12,17,48,500/- (cash deposited in bank). Thus the ld. AO computed the net profit of the assessee Rs. 5,10,03,468/- as against Rs. 5,19,80,398/- declared by the assessee.

3. The ld. CIT (A) in para 6.2 (xxvii) of her order confirmed the rejection of books of accounts on the ground that the complete detail for the cash received from debtors is not available and the advance from customers was not found verifiable.

4. Consequently, the Net Profit rate by applying 2.59% on total turnover of Rs. 2,09,09,94,399/- is worked out at Rs. 5,41,56,755/-. The declared net profit was Rs. 4,93,84,458/-. Accordingly, an addition of Rs. 47,72,297/- [Rs. 5,41,56,755 - Rs. 4,93,84,458] was confirmed 5.1. Finding/Observations of ld. AO: -

The relevant findings and observations of ld. AO is at page 21-22 of the order:-

5.2. Finding of ld. CIT(A): -

The findings of ld. CIT(A) is at Page 56 para 6.2 (xxvii). The relevant finding of CIT (A) (as per rectified order dated 11.07.2022) is as under:-

Motisons Jewellers Ltd.

"However, in view of the fact that the AO has made telephonic verification from some of the debtors and found that they denied to recognize any such purchase on credit and also the fact that the appellant could not furnish full name, address and PAN of such persons on the basis of which summons u/s 131 could be issued to these parties the sales made to these persons remains unverified. Thus apart from the amount of Rs. 25,96,480/- realized from debtors, further advance of Rs. 11,86,250/- received by the appellant from its customers was also not found verifiable by the AO in absence of complete details. Accordingly, I find that the AO is justified in rejecting the books of accounts of the appellant by invoking the provisions of section 145(3) of the Act. It is also observed that the AO has applied Net Profit rate at 2.59% for the year under consideration as against 2.36% declared by the appellant. However, while applying the aforesaid rate, the AO has treated the amount of Rs. 12,17,48,500/- as bogus turnover and taxed the same u/s 68 of the Act. Since in the above paras, I have held Rs. 12,17,48,500/- to be part of total sales and deleted the addition made by the AO u/s 68 of the Act, accordingly, the Net Profit rate of 2.59% applied by the AO is now directed to be applied on the total turnover of Rs. 2,09,09,94,399/- (including the amount of Rs. 12,17,48,500/-) declared by the appellant for the year under consideration. The AO has made an addition of Rs. 5,10,03,468/- by applying the Net Profit rate of 2.59% on reduced turnover of Rs. 1,96,92,45,899/-. Consequently, the Net Profit rate by applying 2.59% on total turnover of Rs. 2,09,09,94,399/- is worked out at Rs. 5,41,56,755/-. Accordingly, an addition of Rs. 47,72,297/- [Rs. 5,41,56,755 - Rs. 4,93,84,458 (as declared by the appellant))] is confirmed and the balance addition of Rs. 4,62,31,171/- is directed to be deleted."

5.3 Submission of assessee: -

5.3.1 The ld AO has not given any show cause notice for rejection of books of account and estimation of income by apply profit rate:-



The AO has never issued show cause notice as to why the books of account may not be rejected under section 145(3) of the Act and the assessment may not be completed in the manner provided under section 144 of the Act.

(i) The lower authorities have not made a categorical finding that accounts of the assessee are not correct or complete or the method of accounting provided in sub-section (1) has not been regularly followed by the assessee or income has not been computed in accordance with the standards notified under sub section (2).

Motisons Jewellers Ltd.

"145(3) Where the 7 Assessing] Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where the method of accounting provided in sub section (1)[has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144."

(ii) The ld AO has not given show cause notice as required under section 144 of I. Tax Act before estimation of income by applying NP rate. The relevant part of section 144(1) is re-produced as under:- "The [Assessing] Officer, after taking into account all relevant material which the [Assessing] Officer has gathered, [shall, after giving the assessee an opportunity of being heard, make the assessment] of the total income or loss to the best of his judgment and determine the sum payable by the assessee ] on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub- section (1) of section 142 has been issued prior to the making of an assessment under this section.]"

5.3.2 The learned AO has rejected the books of account u/s 145(3) and ld CIT(A) has confirmed the rejection of books of account but the assessment has been framed u/s 143(3) not under section 144 as required by section 145(3) The lower authorities has rejected/confirmed the rejection of books of account and application of section 145(3) of the Act but they failed to make compliance of section 145(3) of the Act, which requires that in case of rejection of the books of account, the assessment should be framed u/s 144 of the Act but the ld AO framed this assessment u/s 143(3), meaning thereby either the assessment is bad in law or not application of section 145(3) of the Act.

5.3.3 The purchases from Paras Gems & Jewellers, M/s Girdhar Jewellers Pvt Ltd and M/s Girdhar Associates were held genuine:-

The Id CIT(A) has examined the genuineness of purchases from M/s Paras Gems & Jewellers, M/s Girdhar Jewellers Pvt Ltd and M/s Girdhar Jewellers and held the same genuine on the basis of her detailed findings in para 6.2 (ix) and 6.2(x) of her order and the department has not Motisons Jewellers Ltd.

challenged the finding of Id CIT(A) and therefore, the decision of Id CIT(A) over genuineness of purchases has attained finality. Therefore, the books of account cannot be rejected on the ground of genuineness of purchases.

#### 5.3.4 No ground to reject the books of account:-

When all the purchases are genuine and correctly recorded in books of account including stock register, the books of account cannot be rejected as the assessee fulfils all the conditions of section 145(3) namely:-

- (i) The books of account are complete and correctly maintained by the assessee.
  - (ii) The method of accounting provided in sub section (1) has been regularly followed by the assessee, and
  - (iii) The income has been computed in accordance with the standards notified under sub-section (2)
- 5.3.5 Non-verification of amount received from debtors and advance from customers cannot be a ground for rejection of books of accounts particularly when the sales against the debtors and advances have been accepted as genuine: -

The assessee claimed that out of total Rs. 12,17,48,500/- deposited into bank a/c in demonetized currency the amount of Rs. 25,96,480/- was realized to its from its debtors and Rs. 11,86,250/- received advance from customers. The Id. CIT (A) in her order treated the entire cash sales and corresponding cash deposit as genuine, then the amount received from debtors/advance from customers cannot be treated as non-verified and this cannot be a ground for rejection of books of account.

#### 5.3.6 Submission regarding to genuineness of debtors

1. The list of debtors is at PB Page 163 and on verification of such list it is apparent that the total sales to such debtors was made of Rs. 41,75,995/- against which Rs. 13,30,000/- was received immediately at the time of sales and balance Rs. 28,45,995/- (41,75,995-13,30,000) remained outstanding i.e. receivable from debtors. Out of this outstanding amount Rs. 25,96,480/- received during the period from 03.11.2016 to 08.11.2016 and balance Rs. 2,49,515/- after 08.11.2016. The Id. AO as well as CIT (A) considered the sales of Rs. 41,75,955/- made to these parties as genuine, as while computing the total sales of the assessee, and even for estimating the NP profit, lower authorities have considered these sales as part of turnover. Both the authorities treated the cash received from these debtors immediately at the time of sales Rs.

Motisons Jewellers Ltd.

13,30,000/- and Rs. 2,49,515/- received after 08.11.2016 as genuine and verified. The non-verification was assumed for the cash realized from these debtors during the period from 03.11.2016 to 08.11.2016 only. The lower authorities are blowing hot and cold in same stream accepting the part of transaction as verified and part of transaction as unverified.

2. Out of total amount of Rs. 12,17,48,500/- deposited into bank a/c the cash realized from debtors was of Rs. 25,96,480/- only which is very meager looking to the quantum of sales of the assessee and thus cannot be treated as non-genuine and unusual. Further, when the credit sale is accepted as regular feature of the trade of the assessee then it is also obvious that it would be realized on subsequent dates.

3. So far as outcome of telephonic verification made by Id. AO (relevant table at Page 5 of assessment order) from the debtors it is submitted that from perusal of list of sundry debtors, which realized during the period from 03.11.2016 to 08.11.2016 (as submitted along with letter dated 21.12.2019 and enclosed at PB Page 163 to 165) it is apparent that the debtors mentioned at S. No. 1 to 4 of the table (Page 5 of the assessment order) were not realized during the period from 03.11.2016 to 08.11.2016, therefore the verification from such debtors is completely irrelevant to examine the source of demonetized currency deposited into bank a/c. In other two cases the sales of Rs. 19,000/- was made to Asmita Ji on 04.11.2016 against which payment of Rs 9,000 received immediately on 04-11-2016 and balance of Rs 10,000/- was received on 5-11-2016. The sales of Rs. 1,38,000/- was made to Asha Singh on 05.11.2016 against which payment of Rs. 1,00,000/- received immediately on 05-11-2016 and payment of Rs. 38,000/- received on 07-11-2016. Since the sales was made during the period from 03.11.2016 to 08.11.2016 and realization was also made in the same period, therefore there remain no reason to doubt that this amount was realized on some other date and the same was shown in this period.

Further, on telephonic verification made by Id. AO from few debtors (As tabulated at Page 5 of the assessment order) it is apparent from the list in the assessment order that none of the customer expressly had denied the purchases made from the assessee. Some of the customers did not pick the call which cannot be treated as not verified by the customers. Further, the AO could have repeated the calls if he wanted to do justice. The assessee had mentioned in the invoices the mobile numbers of the customers which were provided to them by its customer at the time of preparation of invoices. If some of the customers are not responding the same or their no. are not in service, the assessee cannot make responsible for that. Some of the customers who picked call replied that they do not remember about the purchase which may because of simple reasons that either after having passed more than three year since the Motisons Jewellers Ltd.

Jewellery purchased by them and also of minor amount they would not be remembering such purchase or may be for other reason best known to them. It is most importantly relevant to mention here that none of the mobile no was found wrong number or not belonging to the person in whose name the sale bill was issued. Then, there remains no reason to doubt regarding the genuineness of the sales made to these customers because if the assessee had not made sales to such persons than

how the assessee will get the number of such persons.

It is further relevant to mention here that something to get confirmed on telephone cannot be treated as evidence in the Income Tax because the same can never be the part of the assessment record to prove the facts in future. Because it cannot be known by anyone that what was asked and what was replied, and who responded the telephone. In case of discrepancy the opportunity of cross examination was supposed to be provided which had not been provided.

#### 5.3.7 Submission regarding to genuineness of advance from customers

1. The assessee received advance of Rs. 11,86,250/- from the customers. The ld. AO as well as CIT (A) considered the corresponding sales made to these customers as genuine, as while computing the total sales of the assessee, for estimating the NP profit, considered these sales as part of turnover. Receiving of advance from customer is regular feature of trade of the assessee and the same was also prior and after to the period 03.11.2016 to 08.11.2016. Thus, the advances received during the period from 03.11.2016 to 08.11.2016 only cannot be treated as non-genuine.

2. Further, out of total amount of Rs. 12,17,48,500/- deposited in bank in demonetized currency the advance received from customers was of Rs. 11,86,250/- which is very meager amount looking to the quantum of sales of the assessee.

3. The details of advances received viz a viz sales made to such parties, in which the advances were adjusted is as under: -

Date of advance	Advance amount	Name of party	Date of sale made and bill No.	Amount sales discount)
03.11.2016	10,000	Anil Ji Mehta	07.01.2017 Bill No. MG 10852	
				Motisons Jewellers Lt
03.11.2016	1,00,000	Asha Ji Bakliwal	30.11.2016 Bill No. MG-9291	1,00,
03.11.2016	10,000	Prahlad Meena	29.11.2016 Bill No. MG-9238	70,
03.11.2016	50,000	Siddharth Ji	18.11.2016 Bill No. MG-8933	50,
03.11.2016	5,000	Sweta Ji	13.01.2017	31,

				Bill No. MG-11162	
04.11.2016	46,650	Mahal Ram Meena		26.11.2016	51,
				Bill No. JB-3204	
04.11.2016	18,000	Mahendra Jain	Kumar	17.11.2016	1,11,
				Bill No. MG-8909	
04.11.2016	10,000	Seema Ji Mittal		05.12.2016	88,
				Bill No. MG-9480	
04.11.2016	10,000	Mukesh Ji (Geet Jewellers)		28.11.2016	15,
				Bill No. MS-6168	
05.11.2016	5,000	Anish Ji		09.11.2016	23,
				Bill No. MG-8817	
05.11.2016	20,000	Ashima Gupta		02.01.2018	29,
				Bill No. MG-13722	
05.11.2016	40,000	Giriraj Prasad		03.12.2016	4,71,
					Motisons Jewellers Ltd.
				Bill No. MG-9436	
05.11.2016	10,000	Reenu Pareek		13.12.2016	10,000
				MS-5386	
05.11.2016	1,00,000	Shri Narayan Sharma		29.06.2017	1,02,000
				Bill No. JB-1710	
06.11.2016	4,000	Pankaj Meena		15.11.2016	13,700
				Bill No. MG-8867	
06.11.2016	5,000	Namita Ji Garg		14.11.2016	16,500
				Bill No. MG-8842	
06.11.2016	25,000	Chandrakala Ji		08.11.2016	90,000
				Bill No. MG-8785	

06.11.2016	1,00,000	Gurpreet Kaur	05.12.2016	2,08,900
			Bill No. MG-9492	
06.11.2016	1,00,000	Maya Devi Ji	05.12.2016	1,90,750
			Bill No. MG-9490	
06.11.2016	1,00,000	Norat Mal Ji	05.12.2016	1,35,000
			Bill No. MG-9488	
06.11.2016	50,000	Pankaj Ji	13.12.2016	68,000
			Bill No. MG-9826	
06.11.2016	6,500	Richa Shukla	15.12.2016	56,500
			Bill No. MG-9891	
			Motisons Jewellers Ltd.	
06.11.2016	5,000	Komal Sharma	11.11.2016	32,800
			Bill No. MG-8820	
07.11.2016	15,000	Jassi Ji	03.12.2016	42,200
			Bill No. JB 3264	
07.11.2016	50,000	Kailash Ji	08.11.2016	1,37,500
			Bill No. JB-2863	
07.11.2016	5,000	Krishna Joshi	13.05.2017	44,380
			Bill No. MG-2202	
07.11.2016	10,000	Rakesh Ji	23.11.2016	18,265
			Bill No. MG-9058	
07.11.2016	13,000	Suman Ji	02.12.2016	43,000
			Bill No. MG-9382	

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5.3.8 Addition of Rs. 47,72,297/- sustained as against the alleged unverifiable realisation from debtors Rs. 25,96,480/- and advances of Rs. 11,86,250/- totalling to Rs. 37,82,730/- The ld CIT(A) sustained addition of Rs. 47,72,297/- on account of NP and ground against such addition is unverifiable amount of Rs. 37,82,730/- on account of realisation from debtors and advances, which is very excessive and highly unjustifiable more so when the other receipts are not questionable. At the worst the profit rate could be applied on this alleged unverifiable amount of Rs. 37,82,730/-

5.3.9 In this regard the reliance is placed on the following decisions: -

Motisons Jewellers Ltd.

i) Hon'ble High Court of Bombay in the case of R.B. Jessaram Fatehchand (Sugar Dept.) v/s Commissioner of Income Tax [1970] 75 ITR 33 (Bombay) (Copy at Case Law PB Page No. 153-156) held that :-

Section 145 of the Income-tax Act, 1961 [Corresponding to section 13 of the Indian Income-Tax Act, 1922] - Method of accounting - Rejection of accounts - On assessee's inability to supply addresses of purchasers who purchased goods on cash, ITO rejected assessee's books of account showing result in respect of cash sale transactions, and made addition - AAC deleted additions but Tribunal restored ITO's orders - Whether there was no necessity whatsoever for assessee to maintain addresses of cash customers - Held, yes - Whether, therefore, rejection of book results of assessee was unjustified - Held, yes

- Whether, consequently, additions made to assessee's income were liable to be deleted - Held, yes

ii) Hon'ble ITAT Jaipur Bench in the case of ACIT Circle-1 Jaipur Vs M/s Uttam Chand Deshraj (ITAT Jaipur Bench ITA No 419/JP/2010 Order dated 25/03/2011) (Copy at Case Law PB Page No. 157-158) has made following findings as regard cash sales.

"Making some sales in cash is also no ground for rejecting the books of account. There should be some material that cash sales made by assessee either on account of sale on a lower price or sale made out of the material which is not shown in the books of account. There is no instance that cash sales have been made on lower rate than prevailing market price. In view of these facts and circumstances, we hold that there was no justification in rejecting the books of account and disturbing the trading result."

iii) ITAT Delhi in Kishore Jeram Bhai Khaniya, Proprietor, M/s Poonam Enterprises v. ITO ITA No. 1220/Del/2011 ITAT Delhi Judgement dated 13.05.2014) (Copy at Case Law PB Page No. 159-



167) The Hon'ble Tribunal held that We find that so long as the availability of stock in there and there is nothing adverse against the cash memos issued by the assessee, such cash sales cannot be doubted. Here it is pertinent to note that the volume of such cash sales at Rs.22.06 is to be seen in the light of assessee's total turn- over of Rs.10.29 crores. It is but natural that if a customer makes cash Motisons Jewellers Ltd.

purchase and lifts the goods, there is no duty cast upon the seller to insist for the address of the purchaser. In the light of the fact that stock record was available with the assessee, which evidenced the making of sale, we fail to appreciate as to how any addition can be made by treating cash sales as bogus.....We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition."

5.3.10 In view of above submission it is apparent that all the amount realized from debtors and received as advance from customers, during the period from 03.11.2016 to 08.11.2016, was genuine and verifiable from books of accounts. The ld. AO as well as CIT (A) for no cogent reason treated the same as non-genuine and non-verifiable. These defects were purported just to support addition made. In view of above submission, the rejection of books of account is not correct, therefore consequently addition of Rs. 47,72,297/- sustained by ld CIT(A) by upholding the rejection of books of account and invoking the estimation of the Net profit is also not correct, highly unjustifiable and the rejection of books of account should not be sustained and the addition should be deleted.

The ld AR further submitted that for minor lapse whole books of account cannot be rejected. He submitted that the realization from debtors and advances were for Rs. 25,96,250/- and Rs. 11,86,250/- totaling to Rs. 37,82,830/- as against the total sales of Rs. 209 crore, which comes to only 0.18% for which the whole books of account cannot be rejected. He relied upon the following decisions: -

a) Hon'ble Rajasthan High Court in the case of Malani Ramjivan Jagannath Vs. Assistant Commissioner Of Income Tax (2009) 316 ITR 120 has held as under:- "10. In the face of these undisputed facts and circumstances, the Tribunal in our opinion could not have interfered with the order of CIT(A). In doing so, it had ignored all admitted facts noticed by us above, in the face of which there was no occasion for the AO to have resorted to estimate method. The GP is primarily result of excess of sales over purchases, opening stock, closing stock, the unsold stock at two terminals is only balancing factor. Admittedly out of this four components of trading result, there could not have been any ground for the Revenue to arrive at different result. So far as Motisons Jewellers Ltd.

closing stock is concerned, inventories of existing stock were not found to be incorrect by the AO i.e. that position of stock as shown in the account books was not incorrect. There being no dispute about the sales and purchases, non- maintenance of stock register lost its significance so far as arriving at GP is concerned. Therefore, the CIT(A) was right in his reasoning about admitted state of affairs.

Resorting to estimate of GP rate was founded on no material. It was merely a case of making certain additions on the basis of certain defects pointed out by the AO and which he has shown in different account by giving margin of unvouched expenses. He has disallowed certain expenses.

11. The Tribunal committed basic error in not appreciating the reasoning given by the CIT(A). It is trite to say that in the facts and circumstances of present case, account books are maintained as they were ordinarily maintained years after years and which were found to yield a fair result. Mere deviation in GP rate cannot be a ground for rejecting books of account and entering realm of estimate and guesswork. Lower GP rate shown in the books of account during current year and fall in GP rate was justified and also admitted by the AO as well as CIT(A) as well as the Tribunal. Therefore, fall in GP rate lost its significance. Having accepted the reason for fall in GP rate, namely, stiff competition in market and also that huge loss caused in particular transaction, neither the rejection of books of account was justified nor resort to substitution of estimated GP by rule of thumb merely for making certain additions. We are, therefore, of the opinion that the findings arrived at by the Tribunal suffers from basic defect of not applying its mind to the existing material which were relevant and went to the root of the matter. When all the data and entries made in the trading account were not found to be incorrect in any manner, there could not have been any other result except what has been shown by the assessee in the books of account. We are, therefore, unable to sustain the order of the Tribunal."

b) Further Hon'ble High Court of New Delhi in the case of CIT-XII vs Smt Poonam Rani in ITA No. 406/2009 vide order dated 07/05/2010 held that as under:-

Motisons Jewellers Ltd.

"Section 145(3) provides for assessment in the manner prescribed in section 144 where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee or where either the method of accounting provided in sub-section (1) or the accounting standards as notified under sub-section (2) has been regularly followed by the assessee. It was not the case of the revenue that the assessee had not followed either cash or mercantile system of accounting. It was also not the case of the revenue that the Central Government had notified any particular accounting standard to be followed by tour operators. Hence, the second part of sub-section (3) of section 145 would not apply to the instant case. [Para 5] The Assessing Officer had not pointed out any particular defect or discrepancy in the account books maintained by the assessee. During the course of hearing before the Commissioner (Appeals), it was pointed out by the assessee that her account books were duly audited under section 44AB of the Central Excise Act and the quantitative details as required by clause 28(b) of Form No. 3CD regarding raw material and finished products (i.e., opening stock of raw material, raw material issued to production department, raw material consumed and closing stock of raw material, opening stock of finished goods, finished goods produced during the year, finished goods sold and closing stock of finished goods) were prepared and audited by certified accountant and were enclosed with Form No. 3CD which had been placed on record, but the Assessing Officer had ignored the factual figures, both in qualitative and quantitative terms, enclosed with the return and filed during the course of assessment proceedings. It was for that reason that the Commissioner (Appeals) was satisfied that

the assessee had furnished complete details, including quantitative details in respect of purchase of raw material, manufacture of copper wire and sale of the finished products. In those circumstances, the accounts maintained by the assessee could not have been said to be incomplete or inaccurate. In fact, the Assessing Officer Motisons Jewellers Ltd.

had no material before him to treat the accounts of the assessee as defective or incomplete. [Para 6] As regards the marginal increase in the weight of the finished product, the explanation given by the assessee had been accepted not only by the Commissioner (Appeals) but also by the Tribunal. The Assessing Officer had no material before him on the basis of which it could be said that the weight of the wire did not increase even marginally during the process of enamelling. Therefore, he had no justification, in law, in rejecting the explanation given by the assessee in that regard. The fall in gross profit ratio, in the absence of any cogent reasons could not, by itself, have been a ground to hold that proper income of the assessee could not be deduced from the accounts maintained by her and, consequently, could not have been a ground to reject the accounts by invoking section 145(3). [Para 8] The fall in the gross profit ratio could be for various reasons such as increase in the cost of raw material, decrease in the market price of finished product, increase in the cost of processing by the assessee, etc. There was no finding that the actual cost of the raw material purchased by the assessee was less than what was declared in the account books. There was no finding that the actual cost of processing carried out by the assessee was less than what had been declared in her account books. No particular expenditure shown in the account books had been disallowed by the Assessing Officer. There was no finding by the Assessing Officer that the actual quantity of finished products produced by the assessee was more than what was shown in the account books. There was no finding that the assessee had made any such sale of the finished products which was not reflected in the account books. There was no finding by the Assessing Officer that the finished products were sold by the assessee at a price higher than what was declared in the account books. In those circumstances, the Commissioner (Appeals) and the Tribunal were justified in holding that the Assessing Officer could not have Motisons Jewellers Ltd.

increased the gross profit ratio merely because it was low as compared to the gross profit ratio of the preceding year. [Para 9] The revenue contended that the assessee was not maintaining the daily stock register. However, no such finding was found in the assessment order. On the other hand, the assessee had submitted before the Commissioner (Appeals) that Form No. 3CD containing all the quantitative details in respect of raw materials as well as the finished goods and duly audited by the certified accountant had been placed on record, but the Assessing Officer ignored those actual figures enclosed with the return. In any case, there is no statutory provision under the income-tax regime requiring the assessee to maintain the daily stock register. Hence, even if no such register was being maintained by the assessee, that, by itself, would not lead to the inference that it was not possible to deduce the true income of the assessee from the accounts maintained by her, nor the accounts could be said to be defective or incomplete for that reason alone. If the stock register is not maintained by the assessee, that may put the Assessing Officer on guard against the falsity of the return made by the assessee and persuade him to carefully scrutinize the account books of the assessee, but the absence of one register alone does not amount to such a material leading to the conclusion that the account books were incomplete or inaccurate. Similarly, if the rate of gross profit declared by the assessee in a particular period is lower as compared to the gross profit declared by

him in the preceding year, that may alert the Assessing Officer and serve as a warning to him to look into the accounts more carefully and to look for some material which could lead to the conclusion that the accounts maintained by the assessee were not correct, but a low rate of gross profit, in the absence of any material pointing towards falsehood of the account books, cannot, by itself, be a ground to reject the account books under section 145(3). [Para 10] Motisons Jewellers Ltd.

In any case, the question whether fall in gross profit stood explained by the assessee or not was a question of fact. Both, the Tribunal and the Commissioner (Appeals), having accepted the explanation given by the assessee and the finding of fact recorded by them having not been shown to be perverse in any manner, no substantial question of law arose in the instant case and the appeal was, accordingly, to be dismissed."

c) M. DURAI RAJ vs. COMMISSIONER OF INCOME TAX HIGH COURT OF KERALA (1972) 83 ITR 484 (KER) :--

Held What is relevant to consider in such cases is whether the assessee's accounts are maintained according to the method regularly employed by him, whether they are correct and complete, and whether the income can be properly computed from the accounts. There is no finding that the purchases have been exaggerated or the sales have been suppressed, or that any transaction has not come into the accounts. In these circumstances, the grounds stated by the Tribunal are neither valid nor relevant in rejecting the accounts of the assessee.

d) ST Teresa's Oil Mills Vs State of Kerala 76 ITR 365 (Ker) Accounts regularly maintained in the course of business have to be taken as correct unless there are strong and sufficient reason to indicate that they are unreliable.

e) CIT Vs Jas Jack Elegance Exports 324 ITR 95 (Delhi) :- Hon'ble Delhi High Court held that Sec. 145(3) provides for assessment in the manner prescribed in s. 144, where the AO is not satisfied about the correctness or completeness of the accounts of the assessee or where either the method of accounting provided in sub-s. (1) or the Accounting Standards as notified under sub-s. (2) have not been regularly followed by the assessee. This is not the case of the Revenue that the assessee had not followed either cash or mercantile system of accounting stipulated in sub-s. (1) of s. 145. This is also not the case of the Revenue that the Central Government had notified any particular Accounting Standards to be followed by manufacturers and exporters of Motisons Jewellers Ltd.

readymade garments. Hence, the second part of sub-s. (3) of s. 145 does not apply to this case. As noted by the CIT(A) as well as by the Tribunal, the AO had not pointed out any defect in the accounts books maintained by the assessee, which, admittedly, were produced before the AO for his consideration. This is also not the finding of the AO that the account of the assessee was not complete. No provision either in the Act or in the rules requiring an assessee carrying business of this nature, to maintain a stock register, as a part of its accounts has been brought to notice. As regards non-production of stock register, the assessee has given an explanation which has been accepted not only by the CIT(A) but also by the Tribunal and both of them have given a concurrent finding of fact that maintaining stock register was not feasible considering the nature of the business

being run by the assessee which was engaged in the business of manufacturing readymade garments by purchasing fabric which was then subjected to embroidery, dyeing and finishing and then converted into readymade garments by stitching. Sec. 145(3) therefore could not have been applied by the AO to the present case. As regards failure of the assessee to produce the persons to whom payments were made by the assessee for fabrication, embroidery and dyeing and finishing, etc., the AO was at liberty to summon any or all of them in case he wanted to verify the genuineness of the payments made to them. No such course of action was, however, adopted by him. Failure of the assessee to produce those persons could not have been a ground for rejecting the accounts under s. 145(3). The AO did not point out any difference in the consumption of raw material and production of finished goods when compared to earlier years. The AO did not say that after comparing the raw material consumed and finished goods produced in the previous years with the raw material consumed and the finished goods produced in the year in question, he had found that the number of finished goods pieces actually produced by the assessee should have been more than the number of pieces declared in the account books produced before him. Another important aspect of this case is that, admittedly, the GP percentage declared by the assessee in the asst. yr. 2003-04 which was the immediate preceding year, was more or less the same as was declared in the asst. yr. 2004-05, to which this appeal pertains. However, the AO, instead of applying the GP ratio declared in the immediate preceding year, applied the GP ratio declared in the asst. yr. 2002-03, thereby failing to maintain Motisons Jewellers Ltd.

the accepted principle of continuity and consistency. The question whether fall in gross profit stood explained by the assessee or not is a question of fact. Both, the Tribunal as well as CIT(A) has accepted the explanation given by the assessee. No substantial question of law arises.

f) Haridas Parikh Vs ITO 113 TTJ 274 (ITAT Jodhpur):- Hon'ble ITAT Jodhpur Bench has held that unless the AO is able to point out certain transactions which have been left to be entered in the books of account or that the assessee has sold some of the items at a price higher than what is disclosed in the books of account or if proper particulars, bills, vouchers, are not forthcoming etc., the books of account cannot be rejected without assigning specific reasons. In the instant case merely because different range and nature of items are being dealt with by the assessee and the maintenance of quantitative stock of each and every item is not practically possible, the books of account maintained by the assessee which are free from any defect cannot be rejected merely because the average GP rate was slightly lower than the average GP rate of the earlier year.

g) Vishal Infrastructure Ltd Vs ACIT 104 ITD 537 (ITAT Hyderabad) :- Hon'ble ITAT Hyderabad A Bench held that the undisputed fact is that the assessee which is a limited company has been consistently following a particular method of accounting. Its accounts are audited both under the Companies Act as well as under s. 44AB. Such audited accounts are being filed with the Registrar of Companies as well as with the IT Department for more than 7 years. The Revenue has scrutinized the accounts and the method of accounting regularly employed and adopted by the assessee year after year have not been found fault with. Auditors of the company both under the Companies Act and the IT Act have been consistently certifying that the assessee has been regularly following the method of accounting and that the annual profits can be properly deduced from such method of accounting employed by the assessee. The auditors over the years have also been certifying that the

accounts are regularly maintained and are complete in the sense that there is no significant omission therein. This finding has been accepted by different AOs over a period of seven years. Though the principles of res judicata do not apply to income- tax proceedings, each assessment year being a unit by itself, yet in cases, when a fundamental aspect permeating through the different assessment years has been found as a fact one Motisons Jewellers Ltd.

way or the other and parties have been allowed that position to be sustained by not challenging the order, it may not be appropriate to allow that position to be changed in a subsequent year. For rejecting the view taken for the earlier assessment years, there must be a material change in the fact situation. Hon'ble ITAT placed reliance on -- Radhasoami Satsang vs. CIT (1991) 100 CTR (SC) 267 : (1992) 193 ITR 321 (SC), CIT vs. A.R.J. Security Printers (2003) 183 CTR (Del) 323 : (2003) 264 ITR 276 (Del) and CIT vs. Neo Poly Pack (P) Ltd. (2000) 245 ITR 492 (Del).

h) ITAT Jaipur in M/s Dreamax Infrastructure Developers, vs ITO ITA No 374/JP/2017 order dated 25/05/2018 held that :-

"Accordingly, in view of the above facts and circumstances of the case when the assessee produce all the relevant details and evidence then insignificant defects in supporting evidence cannot a reason for rejection of books of account. In case the Assessing Officer proposed to examine the claim of expenditure then each and every item of expenditure has to be verified independently and disallow the same if it is not supported by a proper verifiable evidence. Once the expenditure claimed by the assessee is not found to be bogus or excessive then the low profit declared by the assessee cannot be a reasoned for rejection of books of account. "

i) Triveni Pharma V. Income Tax Officer (2005) 142 Taxman 46 (Jaipur) (TM) (MAG) "No objection, whatsoever was raised by the Assessing Officer that valuation of closing or opening stock was not available with the assessee. Thus, it was unnecessary for the Tribunal to get involved in the controversy not raised by the Assessing Officer. The Assessing Officer further did not challenge that the purchases and sales of the assessee were fully vouched. The accounts could not be rejected when fact of vouched purchases and sales was not disputed. The only objection the Assessing Officer raised was that the assessee did not maintain quantitative details of each item".

Motisons Jewellers Ltd.

"The basis of rejection of books of account was non- maintenance of day-to-day stock register and quantitative details of goods purchased and sold. No reference whatsoever was made to the notification applying Accounting Standards in case of the assessee's maintaining books on mercantile basis".

"The assessee had recorded purchases and sales of each item in the ledger which was admittedly produced before the Assessing Officer. From the said ledger, the assessee's auditor prepared quantitative detail and the same was filed with the return. The above statement contained all necessary details of opening stock, purchases, sales and closing stock. When complete ledger

account of purchases and sales was maintained, it could not be said that accounts of the assessee were not subject to verification. Stock available with the assessee, on any given date, could be found out by making reference to the ledger account. Therefore, books of account could not be rejected on the ground that they were not correct or incomplete or not subject to verification".

j) Avdesh Pratap Singh Abdul Rehman & Bros Vs CIT (1994) 210 ITR 406 (All) -Held that absence of stock register may not per se lead to an inference that accounts are false or incomplete.

k) Pandit Bros Vs CIT (1954) 26 ITR 159 (Pun) -Held that absence of stock register is not sufficient ground to reject the books of account.

l) Ashok Refractories Pvt Ltd Vs CIT (2005) 279 ITR 475 (Cal) -Held that absence of stock register may not per se lead to an inference that accounts are false or incomplete.

m) Antiquairiate Vs ACIT 37 Taxworld 145 (ITAT. Jaipur).

n) Jaitick Intermediates (P) Ltd V. Assistant Commissioner of Income Tax (2016) 73 Taxmann.com 195 (Gujarat) "In CIT v. Smt. Poonam Rani [2010] 192 Taxman 167/326 ITR 223 (Delhi) it was held that if stock register is not maintained by the assessee that may put the Assessing Motisons Jewellers Ltd.

Officer on guard against the falsity of the return made by the assessee and persuade him to carefully scrutinize the account books of the assessee. But the absence of one register alone does not amount to such a material as would lead to the conclusion that the account books were incomplete or inaccurate. Similarly, if the rate of gross profit declared by the assessee in a particular period is lower as compared to the gross profit declared by him in the preceding year, that may alert the Assessing Officer and serve as a warning to him, to look into the accounts more carefully and to look for some material which could lead to the conclusion that the accounts maintained by the assessee were not correct. But, a low rate of gross profit, in the absence of any material pointing towards falsehood of the account books, cannot, by itself, be a ground to reject the account books under section 145(3)".

"In view of above observations and considering the facts of the case, the view taken by Commissioner (Appeals) is required to be accepted by setting aside the impugned order of the Tribunal".

o) Delhi Securities Printers V. Dy. Commissioner of Income Tax, Circle 33 (1), New Delhi (2007) 15 SOT 353 (Delhi) "The books of account regularly maintained in the course of business which are duly audited under the provisions of the Act and are free from any qualification by the auditors should be taken as correct, unless there are strong and sufficient reasons to indicate that they are unreliable. For rejecting the books of account, it is revenue's onus to prove that either the books of account maintained by the assessee are not correct and complete or the method of accounting adopted is such that true profits cannot be deduced therefrom. Therefore, the Assessing Officer is required to indicate specific defects in the books of account which clinches the profit shown by the

assessee or its state of affairs".

"Therefore, the action of the lower authorities in rejecting the book results merely because the assessee had not maintained stock register, without pointing out any specific defect in the books of account, of any nature whatsoever was not justified. Therefore, the book results of the assessee were to be accepted".

Motisons Jewellers Ltd.

19. Per contra, the ld. DR supported the rejection of books of account by the lower authorities and thereby estimation of profit too and supported the arguments advanced in the respective order of the lower authorities on the issue.

20. We have considered the rival contention and perused the orders of the authorities and the material available on record arguments advanced by both the parties and also gone through the judicial decision relied upon by both the parties to drive home to their contentions. We find from the records that show cause notice so as to rejection of books of account u/s 145(3) of the Act was not given by the AO and the assessment completed in the manner provided u/s 144 of the Act. It is also noteworthy to mention that that the AO has not given any show cause notices as required u/s 144/145 of the Act before estimation of income by applying the N.P. Rate. It is also ridiculous to note that AO had rejected the books of account u/s 145(3) of the Act which has been confirmed by the ld. CIT(A) but assessment has been framed u/s 143(3) and not u/s 144 as required u/s 145(3) of the Act which Motisons Jewellers Ltd.

indicates that the assessment is bad in the eyes of law. From the order of the ld. CIT(A) it is seen that the ld. CIT(A) had examined the genuiness of purchases from M/s. Paras Gems and Jewellers, M/s. Girdhar Jewellers (P) Ltd. and M/s. Girdhar Jewellers and held the same as genuine on the basis of her detailed findings in para 6.2 (x) for which the Department has not challenged the findings of the ld. CIT(A) as to the issue of genuineness of the purchases and thus the books of account cannot be rejected on the ground of genuineness of purchases. It is essential to indicate that when all the purchases are genuine and correctly recorded in the books of account as well as stock register then the books of account should not be rejected u/s 145(3) of the Act. It is further noted from the record that the assessee claimed that out of total claim of Rs.12,17,48,500/- deposited into bank account in demonetized currency, the amount of Rs.25,96,480/- was realized from its debtors and Rs.11,86,250/- was received as advance from the customers and the ld. CIT(A) in her order treated the entire cash sales and corresponding cash deposit as genuine. Thus the amount received from debtors/ advance from customers cannot be treated as unverifiable and this cannot be a ground for rejection of Motisons Jewellers Ltd.

books of account. We noted from PB Page 163 of the paper book i.e. the list of debtors where total sales to such debtors was amounting to Rs.41,75,995/- against which Rs.13,30,000/- was received at the time of sales and balance Rs.28,45,995/- was outstanding which was receivable from the debtors. It is also observed from the records that lower authorities considered the sale of Rs.41,75,955/- made to the parties as genuine and while computing the total sales of the assessee



and even for estimating the net profit, the lower authorities had considered these sales as part of turnover and thus treated the cash received from the debtors immediately at the time of Sales of Rs.13,30,000/- and Rs.2,49,515/- received after 8-11-2016 as genuine and verified.

We feel that out of total amount of Rs.12,17,48,500/- deposited into bank account, the cash realized from debtors was of Rs.25,96,480/- which is a meager amount looking to the quantum of sales of the assessee and this cannot be treated as non-

genuine. It is also noted from the record that the AO made the telephonic enquiry / verification from the debtors on test check basis for 6 cases only where the list contains more than 250 names, however, in case of discrepancy the opportunity of cross Motisons Jewellers Ltd.

examination was required to be made by the assessee but it was not made by the AO. Therefore, it can be said that the assessee was deprived of cross examining the parties due to lapse on the part of the AO. As regards the genuineness of advance from customers, the assessee received advance of Rs.11,86,250/- from the customers which the lower authorities considered the corresponding sales made to these customers as genuine and it happens in such business that receiving of advance from customer is regular feature and the same was also prior and after the period 03-11-2016 to 8-11-2016 and advances made during this period cannot be treated as non-genuine. Such advances are adjusted against sales made to the parties. It is also noted that the ld.

CIT(A) sustained the addition of Rs.47,72,297/- on account of N.P and ground against such addition is unverifiable amount of Rs.37,82,730/- (i.e. on account of realization Rs.25,96,480/- from debtors and Rs.11,86,250/- from advances). It is apparent from records that all the amounts realized from debtors and received as advance from customers during the period 03-11-2016 to 8-11-

2016 was genuine and verifiable from the accounts then there is no cogent reason by the lower authorities to treat the same as non-

Motisons Jewellers Ltd.

genuine. Hence, looking into the entirety of the facts, circumstances of the case and the case laws cited by the AR of the assessee (supra), we allow the appeal of the assessee by holding that the rejection of books of account on the basis of insignificant defects in all respect, is not justified and books of account deserves to be accepted. Before invoking the provisions of Section 145(3) of the Act, the AO has to bring on record material on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it. In the instant case, it was not the case that the assessee had not followed either cash or mercantile system of accounting. It was also not the case that the Central Government had notified any particular accounting standard not followed by assessee. Further the assessee maintains proper books of account audited by Chartered Accountant and the profit may be derived from the audited books of account therefore there is no justification in estimation of income by applying NP rate and accordingly the lower authorities are directed to delete the addition of Rs. 47,72,297/- sustained by ld CIT(A).

Motisons Jewellers Ltd.

21. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open Court on 29 /09/2022.

Sd/-

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(Dr. S. Seethalakshmi)  
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Member  
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fnukad@Dated:-  
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29 /09/2022.

Sd/-

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(Rathod Kamlesh Jayantbhai)  
ys[kk lnL;@Accountant

vkns'k dh izfrfyfi vxzsf'kr@Copy of the order forwarded to:

1. vihykFkhZ@The Appellant- ACIT, Central Circle-2, Jaipur
2. izR;FkhZ@ The Respondent- Motisons Jewellers Ltd., Jaipur
3. vk;dj vk;qDr@ CIT
4. vk;dj vk;qDr@ CIT(A)
5. foHkkxh; izfrfuf/k] vk;dj vihyh; vf/kdj.k] t;iqj@DR, ITAT, Jaipur.
6. xkMZ QkbZy@ Guard File { ITA No. 161 &178/JP/2022} vkns'kkuqlkj@ By order, lgk;d iathdkj@Asst. Registrar