

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
HON'BLE SHRI BIJAYANANDA PURUSETH, ACCOUNTANT MEMBER**

**ITA No.2136/Mum/2025
(Assessment Year: 2023-24)**

Jagdishkumar Madanlal Gupta J Kumar House, CTS No. 448, 448/1, 449, Subhash Road, Vile Parle (East) Mumbai - 400057	Vs.	The Dy. Commissioner of Income Tax Central Circle-5(1), Mumbai Room No. 429, 4 th Floor, Kautilya Bhavan, Avenue 3, Near Videsh Bhavan, Bandra Kurla Complex, Bandra (East) Mumbai - 400051
PAN/GIR No. AACPG2753N		
(Applicant)		(Respondent)

**With
ITA No. 2671/Mum/2025
(Assessment Year: 2023-24)**

DCIT CC 5 (1), Mumbai Kautilya Bhavan, BKC Mumbai - 400051	Vs.	Jagdishkumar, Madanlal Gupta Ritu Apartment, 7 th Floor, Flat No. 701 JVPD Scheme Road Nagar, Vileparle West Mumbai 400056
PAN/GIR No. AACPG2753N		
(Applicant)		(Respondent)

Assessee by	Dr K Shivram
Revenue by	Shri Vivek Perampurna (CIT-DR)

Date of Hearing	21.01.2026
Date of Pronouncement	16.04.2026

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeals have been filed by the assessee and the Revenue respectively thereby challenging the impugned order dated 18.02.2025 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the Office of the Commissioner of Income Tax, Appeal, CIT(A) 53, Mumbai for the assessment years 2023-24.

Since all the issues involved in these appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity.

The following grounds raised by the **Assessee** are reproduced below:

"1. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs.30,37,081/-u/s 37(1) on account of bogus purchase. The learned CIT(A) erred in confirming addition of Rs. 3,79,635/-of addition against Rs.30,37,081/-, on estimate basis without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the addition be deleted."

The following grounds raised by the **Revenue** are reproduced below:

1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting/deleting the addition/disallowance of bogus purchase made by the AO in respect of purchases made from bogus parties by restricting 100% disallowance made by the AO to 12.5%, ignoring the facts and circumstances of the case established by the Assessing Officer.

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the ration laid down by the Hon'ble apex court in the case of N.K Protein [2017] 84 taxmann.com 195 (SC)/[2017] 250 Taxman 22 (SC), 2017-TIOL-23-SC-IT while finalizing the order in the case of assessee wherein 100% of the bogus purchases were held liable to be added in the hands of the assessee.

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in providing relief on the issue of unexplained money on account of Gold Bullion seized during the search by deleting the addition of Rs. 8,28,39,000/- Value of Gold Bullion seized from the premises of the assessee), by ignoring the facts and circumstances of the case established by the Assessing Officer.

4. The appellant craves leave to add, delete, modify the grounds of appeal before or at the time of hearing.

2. **Ground no. 1** raised by the Assessee and **ground nos. 1 and 2** raised by the department are interrelated and interconnected, therefore, we have decided to adjudicate these grounds through the present consolidated order.

3. We have heard the counsels for both parties, perused the material placed on record, the judgments cited before us, and the order passed by the Revenue Authorities. From the records, we noticed that the Assessee is a sole proprietor engaged in the business of hording advertisement and the total revenue during the year of the consideration from the hording business is Rs.8,97,72,000/-, however, AO made the additions u/s 37 of the Act on account of bogus purchases made by the Assessee from one party i.e. **Jineshwer Enterprises** to the tune of Rs. 30,37,081/-, however, on appeal Ld. CIT (Appeal) restricted the said addition @ 12.5 % of the total purchases which comes to Rs. 3,79,635/-.

4. After meticulously going through the facts of the present case we found that Assessee had purchased iron and steel from the said party i.e. **Jineshwer Enterprises** to the tune of Rs. 30,37,081/- and in this regard Assessee had already placed on record all the related documents in order to substantiate that the purchases made by the Assessee were genuine. Assessee had placed on record a **copy of invoices, e-way bills, ledger accounts and bank statements which are at paper book page no. 499 to 505 of paper book no. 1** placed on record and relied upon by the Assessee. The AO had miserably failed to prove or found any defect in the documents placed on record. Even otherwise the said party i.e. Jineshwer Enterprises has already been held to be a **genuine party** by co-ordinate bench of ITAT in Assessee's group case in the case of **J Kumar Infrastructure**

Project Limited v. DCIT [2025] 176 taxmann.com 193(Mumbai) for AUs 2021-22 and 2022-23.

5. Since the co-ordinate bench of ITAT in Assessee's group case had already held the said party i.e. **Jineshwer Enterprises** to be genuine, therefore, while complying the principles of **doctrine of binding precedent** and **judicial consistency** we also apply the said findings in the present case. Apart from this we are also of the view that additions on the basis of estimation cannot be made by the Revenue Authorities without rejecting the books of accounts and in this case the books of accounts have not been rejected but till the additions have been made on estimation which in our view is bad in law. On this preposition reliance has been placed upon the decision of Hon'ble Bombay High Court in the case of **CIT v. Teletronics Dealing Systems (P.) Ltd. [2015] 53 taxmann.com 20 (Bom)(HC)**. Wherein it was held as under;

"without recording requisite satisfaction in terms of section 145(3) to reject books of account, the Assessing Officer was not justified in making additions on the estimate basis."

The Hon'ble Delhi High Court in the case of **PCIT v. Forum Sales (P.) Ltd. [2024] 160 taxmann.com 93 (Delhi)** had held as under;

"AO could not make additions on account of bogus or inflated expenses on an estimate basis without rejecting books of account."

6. Even otherwise after going through the entire records we found no corroborative evidence produced by the AO to justify that the purchases made by the Assessee from the said party were bogus. Thus while placing reliance on the decision of **Kailashben Manharlal Chokshi v. CIT [2010] 328 ITR 411 (Guj)(HC)** wherein it was held as under;

“that merely on the basis of admission, the assessee could be subjected to such addition, when despite retraction revenue could not furnish any corroborative evidence in support of such admission.”

7. We hold that the additions made by the AO and restricted by the CIT(Appeal) are bad in law and considering our above discussion no additions were called for in the present case. Thus in this way we order accordingly. Thus we direct the AO to delete the additions and order accordingly.

Ground no. 3

8. This ground raised by the Revenue relates to challenging the order of Ld. CIT (Appeal) in providing relief on the issue of unexplained money on account of gold bullion during the search by deleting the addition.

9. We have heard the counsels for both parties, perused the material placed on record, the judgments cited before us, and the order passed by the Revenue Authorities. From the records, we noticed that the substantial additions have already been made on this issue in the hands of **M/s J Kumar Infrastructure Project**

Limited in ITA no. 2137/Mum/2015 and there is no dispute with regard to the ownership of the gold seized, which admittedly belongs to the company **M/s J Kumar Infrastructure Project Limited**. Even the said company had categorically confirmed the ownership of the gold. Thus in view of the undisputed facts, the protective addition made in the case of the Assessee was rightly found unjustifiable and unwarranted and thus was deleted by Ld. CIT (Appeal). The operative portion of Ld. CIT (Appeal) is contained in para no. 4.13 and page no. 23 to 33 of its order, which are reproduced herein under:

4.13 DECISION for Ground No. 1:

I have considered the facts of the case. AO has made substantive addition in the hands of J. Kumar Infraprojects limited in A.Y.2023-24. While deciding the appeal in the case of J. Kumar Infraprojects limited for A.Y.2023-24, I have deleted the said addition in view of the following finding:

"8.28 DECISION for Ground No. 5:

8.28.1 The issue is regarding addition u/s 69A being Gold bullion weighing 57.7 kg found from different persons covered u/s 132 of the Act who have stated the same to be of the appellant herein. The appellant also agreed that the same belong to it and stated that the same is recorded in the books of accounts purchased in earlier years and shown under the head 'Plant & Machinery', it is also undisputed that the bills for purchase of the same were produced by the appellant and having made the payment by banking channels The value of such purchase in the books of the appellant is Rs. 28,42,74,404/-. The AO also examined the persons who have supplied the same gold and the suppliers have duly confirmed the sale and produced necessary records for the same as called for. The AO while disbelieving the purchase have ascribed various reasons for the same as per para 4 of page no. 34-35 of the impugned order. During the course of hearing, the appellant have made various oral and written submissions which are considered. The addition of Rs. 30,37,01,400/- being the value of gold bullion seized during the course of search and valued on the date

of seizure is made u/s 69A of the act. It is therefore, imperative to note the provision of said section which read as under.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

Reading the above provision, it can be seen that when an assessee is found to be owner of any money, bullion etc. and if the same is not recorded in books of accounts, he is supposed to offer explanation for acquisition of the same. Once the money etc. is recorded in the books of account, if any, maintained by him for any source of income, the provision of s. 69A will not apply. However, the AO herein have made the addition for the reason that the gold found is either not the same as is shown as purchased or the gold is purchased and the bills for the same furnished is for gold already consumed as part of business promotion of expenses and hence the gold found is not the same as remaining in books of accounts and hence the gold found remains unexplained. I therefore proceed to examine the various reasons given by the AO in para 4 on pages 34-35 of the impugned order and explanation of the appellant herein.

a. The AO mention that the appellant and promoters of appellant are engaged in unaccounted cash purchase of gold on the basis of cash diary found from Mr. Jagdish Gupta which records payment of Rs. 491.50 lacs to Mr Suresh Poddar on 24/07/2021 which was considered as purchase of 7 kg of Gold on 27/07/2021 and 3 Kg of gold on 28/07/2021 as per images of gold bars sent by Mr. Suresh Poddar to Jagdish Gupta through whatsapp chat and one of the images sent is of the 1 Kg. gold found during search.

1. It is the contention of the appellant that the noting in the diary are duly explained in the assessment proceedings of AY 2022-23 as also appellate proceedings and it is explained that noting in the name of Shri Suresh Poddar in the diary is not related to any business/investment transaction but the name of Suresh Poddar is noted since the cash belonging to the company is sent from residence to office via Shri Suresh Poddar and vice versa as noting is also found on the receipt side of the diary in the name of Suresh Poddar (which

the AO has conveniently ignored-noting on page 11 of diary of amount of Rs. 1.64 crores) The above addition was made in the hands of Mr. Jagdish Gupta which is challenged by him in appeal and appeal is already decided in favor of Mr. Jagdish Gupta.

c. I find that the transaction noted in the diary found during course of search pertaining to Mr. Jagdish Gupta does not reveal that the same is towards purchase of gold. Neither Mr. Jagdish Gupta nor Mr. Suresh Poddar has stated to be for purchase of gold bars. It is the imagination of the AO that the noting in the diary is by the appellant for the purchase of gold bars. It is different thing that one of the images of 1 kg gold bar sent by Mr. Suresh Poddar is of gold found during search but rest of the images are not tallying with the gold found. Thus on the basis of 1 image of 1 kg gold, it cannot be presumed that 10 Kg. of gold is purchased in cash out of unaccounted money. Thus based on such imagination or presumption, it cannot be said that the appellant is engaged in purchase of gold by paying cash out of unaccounted money.

8.28.2 The next allegation is that the appellant has purchased gold and manipulated across various heads like 'Plant & Machinery' or 'Business Promotion expenses etc. but the gold purchased for business promotion expenses and claimed as such is found during search. It is based on payment for 2 Kg of gold to M/s Nakodaji Gold on 16/06/2020 and images sent through Whatsapp chat by Mr Suresh Poddar to Mr. Jagdish Gupta where the image shown of 1 kg 'gold bar which is found during course of search. Thus the explanation of purchase of gold found as accounted as Plant & Machinery is not correct.

1. The contention of the appellant is that while purchasing the gold for whatever purposes, the bills for the same are produced and are duly reconciled as per reconciliation statement filed which is reproduced by the AO on page 10 of the impugned order. The suppliers of gold does not mention the gold bar no in the bills. Mr Suresh Poddar is not dealing in gold but only facilitates the purchase as he is old family friend and has sold diamond jewellery to the family. Since he is situated near Zaveri Bazar which is gold market, he sends quotation and photo of bars after checking genuineness and purity of the same. But it cannot be said that the images sent are of actual purchased and delivered and gold bar is given randomly from stock available.

2. I find that there is nothing on record that the purchase of gold on 16.06.2020 is the same gold as per whatsapp images sent by Mr Suresh Poddar on 17.06.2020. Neither Mr. Shesh Poddar nor the supplier have stated that the purchase of gold on 16.06.2020 from

Nakodaji Gold is same as images sent on 17.06.2020. Hence it cannot be said that the gold as per image sent on 17.06.2020 is same as purchased on 16.06.2020 and is remaining in possession though it is claimed as business expenses on 16.06.2020.

8.28.3 a. The next reason for making addition is that during the course of search Mr. Jagdish Gupta, Mr. Nalin Gupta & Kamal Gupta and post search proceedings the appellant could not explain as to why the gold was kept at home/locker of promoter family and not at corporate office of the appellant.

b. The contention of the appellant is that the 42 Kg. of gold was found from residence of Mrs. Sumitra Ragrahia, mother in-law of Mr. Nalin Gupta (MD of appellant) and 15.7 kg of gold was found from bank locker of Mrs. Kusum Gupta and Nalin Gupta. During the course of search it was explained that since the residence of Mr. Nalin Gupta M.D. was under renovation, the jewellery was kept at residence of his mother-in-law and jointly owned by his wife Shalini Gupta. During the course of search itself as well as during assessment proceedings, the appellant owned up the gold and submitted that it is recorded in books of accounts under the head Plant & Machinery.

c. The issue to be examined is addition u/s 69A of the act. When the issue to be seen from angle of s. 69A, what is relevant is not the place it is kept but the same is whether recorded in books of accounts maintained or not and the source of the same is explained or not. The value of gold bullion is almost 28 crores which by any standard is not small compelling the appellant to keep it safely. Therefore, if the management thinks it fit to keep it at the residence of promoters and directors who are at the helm of affairs, the decision cannot be questioned by the AO. It is also seen that cash of Rs. 5,15,77,200/- found during search from directors and their relatives or senior employees of the appellant was seized. However during the course of assessment proceedings, the appellant owned up the same as kept for safe keeping or for business purposes of the appellant. The AO accepted the claim of the appellant that cash of Rs. 4,50,77,200/- is that of the appellant herein and since the appellant is in possession of cash on hand much above the cash found, the same was treated as explained. The cash considered as explained also include that found from the Directors, their relatives and senior management team of the appellant company. Why the same verdstick is not accepted here in respect of gold that found from the Directors, their relatives and senior management team of the found when the explanation for both the assets is same. The value of gold found is much larger comparing to cash found if cash can be kept for sake keeping at the directors premises, it is all the more reason that the gold bars will be kept for

safe keeping at the premises of the directors and their relatives. The appellant is a listed entity and also answerable to its numerous shareholders for safe keeping its assets. the same cannot be considered as unexplained so as to make addition u/s 69A of Therefore, merely because the bullion is kept at the residence/locker of directors, the same cannot be considered as unexplained so as t make addition u/s 69A of the act.

8.28.4. a. The next reason given is that invoices for gold purchased do not have bearing Gold Bar marking and hence the gold purchased in the books of the appellant cannot be treated as same.

b. The appellant contended that the gold bars purchased does not contain details of or nos es confirmed by the suppliers who were examined by the AO himself. The suppliers also confirmed of having sold bullion to the appellant and having received payment through banking channels, if the market practice of the suppliers is not to mention the details of Gold Bar marking in the invoice raised, the appellant cannot be said to have not explained the same.

c. The AO in para 1.2.9 of the impugned order noted that the suppliers of gold bar were examined u/s 131(1A) of the act and their statements were recorded. He noted the facts emerging put of such examination where they categorically admitted that they have supplied gold to the appellant, they also sell foreign marking gold bars which are imported by their suppliers and they do not distinguish between imported gold and Indian gold bars. They also confirmed that gold bars nos are not mentioned in the bills raised which was a market practice in bullion market but the supply was confirmed as also the payment having been received for the same. The issue to be examined is source of purchase and not marking of the same and mentioning on the bills. Once the suppliers have confirmed the supply and there is no contrary evidence, the same cannot be doubted by these reasons.

8.28.5 a. The next reason ascribed is that in light of whatsapp chats between Mr. Jagdish gupta and Mr. Suresh Poddar which show purchase of gold in cash, the bullion purchased and those found cannot be considered as same and hence the gold found remain unexplained.

b. The contention of the appellant is that there is no purchase of gold in cash. This fact is confirmed by the suppliers. The whatsapp chat between Mr. Jagdish Gupta and Mr. Suresh Poddar is not for purchase of gold but it is presumed so by the AO even though there is no evidence for the same. The addition is made in the hands of Mr. Jagdish Gupta in earlier years has already adjudicated by CIT(A) and the addition is deleted.

c. I have considered the issue of purchase of gold bars in cash in nadier paras. For the reasons stated therein, I have no hesitation to hold that there is no purchase of gold by the appellant in cash. The whatsapp chat between Mr. Jagdish Gupta and Mr. Suresh Poddar is not for purchase of gold but mere sending images of gold bars available at a particular date which is different than the one on which the appellant have actually purchased the gold. Hence on this ground the AD cannot treat the Gold disclosed in books as different from gold found during search.

8.28.6.a. The next reason ascribed by the AO is that recording of gold under the head 'Plant & Machinery', 'Business Promotion' and 'Furniture and Fixtures' is a way of manipulation of accounts and hence the gold found is to be treated as unexplained.

b. The contention of the appellant is that the gold found and seized, particularly the 57.700 kg of gold is recorded under the head 'Plant & Machinery' The same is different than the gold purchased for 'Business Promotion' and 'Furniture and Fixtures' and there are different hills for such purchases. Since the purchase of gold found is recorded under the head 'Plant & Machinery and stands explained, the addition u/s 69A is not sustainable

c. I have considered the submissions. The issue here is explanation of gold bars found which is explained and is duly recorded in books of accounts by making payment through banking channels. Even if the same is recorded under any head will not make the same as unexplained. However, the issue presently is only of the gold found which is 57.70 kgs and source of the same is duly explained as also recorded in books of accounts under the head 'Plant & Machinery and is not transferred from any other account. The same was purchased during the F.Y. 2020-21 and 2021-22 which pertain to A.Y. 2021-22 and 2022-23. The same was accepted as such. The debit of expenses at appropriate place is expected and since original purchase was for different purpose than actually spent for, a journal entry is required which is not unusual. The instance given pertain to A.Y. 2022-23 and not for the year under appeal. In A.Y. 2022-23, it was accepted and no adverse view was taken. It is also a settled law that entry or absence thereof does not determine income-tax liability. Similarly head under which the same is recorded also does not prove that the asset found is unexplained. Thus on such ground, the gold found cannot be treated as unexplained.

8.28.7.a. The next reasons given is that when other evidence of gold purchased in cash and gold recorded in books is different from gold seized are available, the absence of gold bar serial number on invoices

does not prove that gold seized is same as recorded in books and hence the gold found is to be treated as unexplained.

b. The contention of the appellant is that there is no evidence of gold purchased in cash and gold recorded in books is not different than found, the addition is not sustainable.

c. The reason for holding that the appellant is purchasing gold in cash is dealt by me above while deciding first reason for holding so. Similarly the issue whether the gold found is different than that recorded in books is also dealt by me above in reason given in para 8.28.4 and a 28.5 and hence it will be same reason for holding that since the gold found is same as recorded in books of accounts, the same stands explained and hence addition u/s 69A is not sustainable.

8.28.8 a. The next reasons given is that due to evidence of WhatsApp chat of Mr. Jagdish Gupta with Mr. Suresh Poddar and recording of gold transaction in unaccounted transaction diary maintained by Mr. Jagdish Gupta strengthen the fact that gold has been purchased using cash and hence the gold recorded in books of accounts is to be treated as not accounted.

b. The contention of the appellant is that there is no purchase of gold in cash. The diary of Mr. Jagdish Gupta does not prove purchase of gold. On the contrary evidence in the form of gold from other buyers who were examined by the AO during assessment also prove that the gold found is same as purchased from them and duly recorded in books of accounts prove beyond any doubt that the gold found is same as recorded in books.

c. The issue as to whether the appellant purchases gold in cash is dealt by me above. The diary maintained by Mr. Jagdish Gupta is not for transaction of purchase of gold from Mr. Suresh Poddar. For the gold found and seized, there is complete tally of the same by way of entry in books and recording under the head 'Plant & Machinery' in earlier year. No excess gold is found except as recorded in books of accounts. The suppliers do not mention the gold bar no in the bill and the same is only presumed by the AO that particular gold purchased should be treated as consumed. However, the presumption does not survive in view of the evidence filed. There is no evidence that the entry in the diary of Mr. Jagdish Gupta against the name of Mr. Suresh Poddar is for purchase of gold in cash. Thus there being no evidence in form of purchase of gold in cash and no effect of WhatsApp chat of Mr. Jagdish Gupta with Mr. Suresh Poddar, the gold found and seized

being duly recorded in books of accounts cannot be considered as unexplained.

8.28.9 a. Other reasons given in para (ix), (x), (xi) and (xii) by the AO on page 34 and 35 in the assessment order are just for not believing explanation of the appellant furnished during the course of assessment proceedings regarding purchase of gold in cash, explanation about transaction with Mr. Suresh Poddar for purchase of jewelry and not gold, discarding statement of suppliers of gold and the premises of keeping of gold being residences of promoter/directors being suspicious the addition is made.

b. The explanation of the appellant is duly recorded above and is repetition of explanation given.

c. The issue as to whether the appellant is into practice of purchasing gold in cash is dealt by me above. Also the explanation of WhatsApp chat between Mr. Suresh Poddar and Mr. Jagdish Gupta is also dealt by me above. The evidentiary value of suppliers of gold cannot be discarded particularly when they were examined by the AO by recording their statement wherein they have admitted of sale of gold to the appellant and receiving payment thereof. The suppliers categorically stated that as per their market practice, they do not mention gold bar no in the bill and there being no contrary evidence, the gold found is to be treated as explained. The keeping of gold for safety purposes with none other than the directors who are at the helm of affairs of the company cannot be doubted so as to hold that the gold found is different than the gold recorded in books of accounts

8.28.10 / find from the impugned order that the AO has given much weightage to the notice issued which is based on the finding arrived at during search proceedings itself rather than considering the evidence furnished by the appellant. The AO misunderstood the relevance of provision of s. 132(4) vis-à-vis provision of s. 143 of the act. The provision of s. 132 (4) and s. 143(3) are extracted herein for proper understanding the importance attached to both of them.

S. 132

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation. For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.]

8. 143

(3) On the day specified in the notice issued under] sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:)

Reading the above provision, it can be seen that while during the course of search, the authorized officer can examine any person in possession of cash, bullion etc as also record his statement which can be used in assessment proceedings, the same is not a final word in the assessment. The assessment is to be framed u/s 143(3) after considering the evidence as produced by the assessee and take into account of all relevant material. Thus, assessment is to be framed after considering evidences filed during course of assessment proceedings and he cannot restrict only evidence found during search and explanation thereof furnished during search only. In the present case, much weightage is given only to the evidence found during search, but the evidence furnished during search proceeding and post search proceeding, assessment proceedings are ignored for various reasons like place where the asset found is kept, WhatsApp chat, non-mentioning certain details which the AO thinks should be mentioned in the bill for purchase of gold, head under which the seized asset is recorded, presumption that Mr. Suresh Poddar deals in gold in cash etc. All these are only imagination or presumptions, assumptions and surmises of the AO rather than the evidences filed during the search proceedings and also assessment proceedings.

There is another way of looking at the issue involved. The issue is regarding the explanation of 57.7 kg of gold found during search which is treated as unexplained and added u/s 69A of the act. The Whatsapp chat evidence found, if at all by going with the reasoning of the AO, is regarding one bar of 1 Kg gold found during search which should be considered as purchased and consumed for business purposes and another Whatsapp chat evidences of gold purchased and

recorded in books of accounts are not found during search for 8 Kgs of gold. This analysis of AO itself show that there is no contrary evidence for balance 48.7 kgs of gold found and seized. Can the AO generalize the evidence for small size as complete for entire lot?

The answer is clearly in the negative. The evidence filed for 48.7 kgs of gold cannot be and is not doubted except for the reason that another purchase of 9 kg of gold is different than that found during search which is also on the basis of presumption. The presumption is that the images sent by WhatsApp chat by Mr. Suresh Poddar is considered as purchases which is different from facts on record. The statements of suppliers of gold duly prove purchase by the appellant. There is no statement of Mr. Suresh Poddar that the images is in respect of gold purchased by the appellant. The purchase of gold is duly recorded in books of accounts of earlier years when it was not questioned. Thus questioning the same only on the basis of presumptions for the year under consideration when the same was found during search is not tenable in law.

Further during the post search assessment proceeding and also during assessment proceeding the appellant has submitted complete reconciliation of the Gold bullion found with books of accounts. The A.O. has not pointed out any discrepancy in the reconciliation submitted or nor pointed out any excess bullion/gold. The reconciliation submitted is reproduced as under

The A.O. has not been able to refute the submissions and explanation of the appellant regarding purchase of Gold in cash, explanation about transaction with Mr. Suresh Poddar or the evidences, value of supplier statement and replies

Taking the overall facts on record and the evidences filed during the course of assessment proceedings as also before me, it can be said that gold found and seized is duly explained and therefore the addition in respect of said gold found during search cannot be sustained. The addition of Rs. 30,37,01,400/- is therefore deleted.

Accordingly, ground of the appeal is Allowed."

One more reason for making protective addition in the hands of appellant was the apprehension that at any time later

- 1. that JKIL may claim that the gold seized does not belongs to it or*
- 2. the appellant claims / or it is established that gold seized belong to the appellant.*

However, neither JKIL has denied the ownership of gold seized nor the appellant claimed the gold belongs to him.

In view of the above findings the protective addition of Rs. 8,28,39,000/- made by the AO into the hands of the appellant is deleted.

Accordingly, ground of the appeal is Allowed.

10. No new facts or circumstances or documents have been placed on records by Ld. DR in order to controvert or rebut the lawful findings so recorded by the Ld. CIT(A), therefore, we see no reasons to interfere into or to deviate from the findings so recorded by Ld. CIT(A), hence we dismiss the grounds raised by the Revenue and uphold the order of Ld. CIT(A) deleting the additions.

11. Consequently, the appeal filed by the Assessee stands allowed and appeal filed by the Department stand dismissed with no order as to cost.

Order pronounced in the open court on 16.04.2026

Sd/-

(BIJAYANANDA PURUSETH)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 16/04/2026
Ankit, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai