<u>आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक</u>

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री सी.एम.गर्ग, न्यायिक सदस्य **एवं** श्री एल.पी.साहु,लेखा सदस्य के समक्ष

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील(तलाशियां और अभिग्रहण)सं./**IT(SS)A Nos.101-106/CTK/2018**

(**निर्धारण वर्ष /** Assessment Years : 2010–11 to 2014-15 & 2016-17)

N.Roja, Sai Mandir Road, New Colony, Rayagada-765001	Vs.	ACIT, Central Circle-1, Bhubaneswar
स्थायी लेखा सं./PAN No. : **AEKPR 0293 Q**		

(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by	:	Shri P.K.Mishra & T.Rao, ARs
राजस्व **की ओर से** /Revenue by	:	Shri M.K.Goutam, CIT-DR

सुनवाई की तारीख **/ Date of Hearing**	:	17/03/2020
घोषणा की तारीख**/Date of Pronouncement**	:	04/06/2020

<u>आदेश / O R D E R</u>

<u>Per L.P.Sahu, AM</u> :

These six appeals have been filed by the assessee, out of which five appeals for the assessment years 2010-2011 to 2014-2015 have been filed against the order of CIT(A)-2, Bhubaneswar, all dated 02.07.2018 arising out of the assessment order passed by the AO u/s.153A/143(3) of the Act, dated 29.12.2017 and one appeal for the assessment year 2016-2017 has been filed against the order passed by the CIT(A)-2, Bhubaneswar, dated 02.07.2018 arising out of assessment order passed by the AO u/s.143(3) of the Act, dated 29.12.2017.

2. Since the assessee in all the appeals is same and the facts in all the appeals are same, therefore, for the sake of brevity and convenience, all the appeals have been heard analogously and disposed off by this consolidated order. The issues involved in five appeals i.e. the appeals filed for the assessment years 2010-2011 to 2014-2015 being similar, are taken into consideration first, therefore, the identical grounds taken in appeal for A.Y.2010-2011 and the facts mentioned therein are taken for deciding all the appeals. The ground taken in IT(SS)A No.101/CTK/2018 are as under :-

1. *For that, the impugned order of Assessment passed U/S.153A read with section 143(3) of the Act is without jurisdiction and without the authority of law, as such, the same being not sustainable in the eye of law, is liable to be quashed in the interest of justice.*

2. *For that, when documents seized during the course of search operation were duly explained by the Assessee and accepted by the learned A.O, hence he should not have disturbed the Assessment Under Section,143(l)(a) of the Act. The impugned additions made in the order of Assessment for Assessment year 2010-11 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

3. *For that, In course of search, no such incriminating materials could be unearthed by the Search Team, the documents seized by the Search Wing were explained by the Assessee during the course post search inquiry as well as during the course of Assessment also. And when there were no such incriminating material found during the course of search and the seized documents, were well explained by the Assessee which were also accepted by the Search Team as well as by the A.O., then he should have accepted the return filed by the Assessee and should have also accepted the Assessment passed U/s.l43(l)(a) of the Act and should not have disturbed the completed Assessment. Hence the impugned additions made in the order of Assessment for Assessment year 2010-11 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

4. *For that, the learned Commissioner of Income Tax (appeals) during the course of appeal proceeding, not accepted the opening*

balance of Rs.6,62,000 and confirmed the additions made by learned Assessing Officer without considering the return submissions and facts of the case, as the assessee is filing regular returns since 20 years and the assessee has also submitted earlier 2 years cash flows statement along with return of income to substantiate the opening balance which were not at all considered.

5. For these and other reasons to be adduced at the time of hearing that the assessee prays to accept the appeal and delete the entire addition in interest of natural justice and fair play.

3. Further the ld. AR of the assessee has filed an application dated 01.08.2019 for acceptance of additional grounds of appeal already taken in the grounds of appeal filed and submitted that due to lack of knowledge the assessee could not raise the legal ground before the CIT(A), therefore, the same has been raised before the Tribunal for consideration.

4. Ld. AR before us argued both on legal ground as well as on merits, therefore, looking to the facts of the case, the legal ground raised by the assessee is taken on record and appeal is heard on legal grounds as well as on merits.

5. Brief facts of the case are that the assessee is an individual deriving income from house property, remuneration from Hotel Sai International Pvt. Ltd. and household business and filed her original return of income u/s.139(1) of the Act, 1961 on 31.03.2011 showing total income at Rs.1,99,580/-. A search and seizure operation u/s.132 of the Act, 1961 was conducted in the residential premises of the assessee on 12.02.2016 at New Colony, Sai Mandir Road, Rayagada.

Post-search was also conducted on 10.08.2016 in case of the assessee along with other group cases which was intimated to the assessee. Thereafter the AO issued notice u/s.153A of the Act on 27.01.2017, in response to which the assessee filed her return of income on 17.03.2017 declaring the income as already declared in the original return of income. Thereafter the case of the assessee was taken up for scrutiny assessment and statutory notices were issued to the assessee, in response to which the AR of the assessee was appeared on 25.07.2017 and submitted the copy of return of income, bank statements, cash flow statements and other information as per the questionnaire raised by the Assessing Officer(hereinafter referred to as 'AO'). Subsequent notices were also issued to the assessee which were served on the assessee. During the course of search and seizure proceedings at the residential premises of the assessee, it was unearthed that the assessee was having two bank accounts i.e. one in Andhra Bank and other in State Bank of India. During the course of assessment proceedings, the AO noticed that there was a total credit in both the bank accounts amounting to Rs.9,06,811/-. The assessee was asked to explain as to why the bank deposits amounting to Rs.6,07,227/- (i.e. the difference between total credits made in different bank accounts excluding total income shown in the return of income), will not be considered as his undisclosed income. In response

to the above query, the AR of the assessee submitted reply. Further the assessee submitted cash flow statement and its related ledger accounts to substantiate the sources of credits. On verification of the cash-flow statement for the year under consideration the AO found that the assessee has shown Rs.8,54,567/- as opening cash-in-hand and receipts were shown including interest on saving bank accounts and had utilized cash for payments. The assessee was asked to substantiate the opening cash but the assessee failed to substantiate to furnish any evidence for the opening cash balance. It was also noticed that even in the income tax return filed by the assessee for the assessment year 2009-2010, the same was also not reflected in the specified column provided in the return of income, therefore, for want of any evidence, the AO added Rs.6,62,000/- to the total income of the assessee as unexplained opening cash in-hand considering the income declared by the assessee in the previous assessment year.

6. The AO further noticed that the assessee had purchased a piece of land at New Colony Road, Rayagada for a total consideration of Rs.2,90,000/-. On verification of the cash-flow statement, the stamp duty of Rs.20,572/-, which was paid at the time of registration of a piece of land, was not reflected but in the sale deed, it was clearly mentioned that the stamp duty of Rs.20,572/- has been paid. Therefore, the AO added the same into the total income of the assessee

as unexplained investment on stamp duty for registration of land and completed the assessment accordingly.

7. Feeling aggrieved from the order of the AO, the assessee filed appeal before the CIT(A). The assessee also filed detailed submissions and after considering the submissions the CIT(A) held as under :-

> ***Ground Nos.2, 3 & 4:-***
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> *4.1 In these grounds, the appellant has challenged the addition made by the Assessing Officer on account of the excess deposits in bank account of Rs.6,62,000/-. During the course of search and seizure operation at the residential premises of the appellant bank accounts in Andhra Bank and State Bank of India, were unearthed. During the assessment proceedings, the Assessing Officer found that the total credits in these two bank account are of Rs.9,06,811/-. He excluded the income declared by the appellant in the return of income and asked the appellant to explain the remaining credits. The explanation of the appellant was that he had cash-in-hand of Rs.8,54,567/- and it was sufficient to explain the remaining credits. However, according to the Assessing Officer, income declared in the previous assessment order was not sufficient and the appellant did not furnish evidence in respect of the entries in the cash flow statement to merit favourable decision from him.*
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> *4.2 During the appeal proceedings, the appellant has filed income tax returns for A.Y.2008-09 and 2009-10, in which total income of Rs. 1,38,920/- and of Rs. 1,74,560/- have been disclosed. The appellant has also filed cash flow statement for financial year ending 31.03.2008 showing opening balance, of cash-in-hand Rs.3,01,950/- and closing balance of Rs.4,68,100/-. Similarly, appellant has filed cash flow statement for financial year ending 31.03.2009, showing opening balance of cash-in-hand of Rs.4,68,000/- and closing balance of Rs.8,54,567/-. According to the appellant, the closing balance of Rs.8,54,567/- was utilised for credits in the two bank accounts.*
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> *4.3 I have carefully considered the assessment order and the submissions of the appellant. With regard to the non-cash credits, they have to appear from cheque deposits, draft deposits, NEFT or RTGS. The appellant has not made any attempt to explain the non cash credits. With regard to cash deposits in the two bank accounts, they have to come out of accumulated cash balance. The income disclosed in the previous two assessment years is very small to make cash deposits of worthwhile amounts. Further, the appellant does not maintain the books of account and the cash flow statements were prepared to justify availability of cash with the appellant. The common feature of the two cash flow statements is that there are very low drawings of Rs.40,000/-*

and Rs.50,000/-respectively, which is just about Rs.4,000/- per month. The appellant belongs to an affluent family and such small drawing for house hold expenditure and other ceremonial / social functions is extremely inadequate. There is no doubt that the drawings have been deliberately shown small to justify accumulation of cash balance. Therefore, the cash flow statements cannot be relied upon. Considering these aspects, I am of the considered view that the deposits could not from explained non-cash sources or from the accumulated opening cash balance, but they are from the undisclosed income of the appellant. Accordingly, the addition made by the Assessing Officer of Rs.6,62,000/- is confirmed. The grounds of appeal are dismissed.

5. ***Ground No. 5:-***
In this ground, the appellant has contested the addition made by the Assessing Officer of Rs.20,572/- on account unexplained investment on stamp duty and registration of land. In the previous grounds, I have confirmed the addition of Rs.6,62,000/- as undisclosed income of the appellant. The investment of Rs.20,572/- can be treated as application of undisclosed income. Accordingly, the addition of Rs.20,572/- is ordered to be deleted. The ground of appeal is allowed.

8. Feeling aggrieved from the above order of CIT(A), the assessee appealed before the Income Tax Appellate Tribunal.

9. Ld. AR before us, reiterated the submissions made before the CIT(A) and filed paper book containing pages 1 to 53. Ld. AR further submitted that during the course of search and seizure operation there was no any incriminating material found during the course of search. The AO has made addition not on the basis of any incriminating material but the addition has been made by the AO on the basis of bank accounts of the assessee maintained in the Andhra Bank and State Bank of India, which were disclosed in the return of income at appropriate column, therefore, it cannot be said that these accounts were to be in the nature of any incriminating material. It was also submitted by the ld.AR of the assessee that in the appropriate column the return of

income did not accept the other name of bank, otherwise the assessee would have disclosed the other bank account maintained in State Bank of India. Ld. AR strongly relied on the decision of Hon'ble Delhi High Court in the case of Kabul Chawla, [2016] 380ITR 573 (Delhi) and submitted that when there is no any incriminating material, the assessment already completed cannot be interfered with. Further ld. AR to support his contentions, has also relied on the following decisions :-

i) ACIT Vs. Shri Rasik Gopaldas Patel IT(SS)A Nos.617/Ahd/2011 & CO No.8/Ahd/2012, order dated 04.09.2015; and

ii) Dr. Sukanta Chandra Mallick, IT(SS)A Nos.86-91/CTK/2018 & Dr. Sambeet Kumar Mallick, IT(SS)A Nos.92-96/CTK/2018, order dated 08.07.2019

10. On the other hand, ld. DR relied on the orders of authorities below and submitted that the statements recorded during the course of search proceedings by the search party in the case of assessee at question No.4, 12,13,14,18,19 & 20, which read as under :-

Q.4. Please state specific details of the bank accounts and locker maintained m your name and your business concern.

Ans The following are the bank accounts maintained in the name of myself:-
(a) SBI Rayagada, A/C No.-11038950797 Vs
(b) Andhra Bank, A/C No.- 047110027000055
(c) Two locker in Indian Overseas Bank maintained jointly with my husband N. Trinath Rao.

Q.12 I now present before you page no. 18 to 27 of seized material NTR-01 which is a bunch of loose sheet. Please explain the contents.

Ans It is an agreement for purchase of immovable property between myself and Smt. Huss Nara Bibi. I have paid an advance of Rs. 5 Lakh.

Q.13 Please furnish the source for payment of the above advance.
Ans This is from my own income i,e rental income, share income-from firm and petty business income and from money given by my husband .

Q14 What are the source for the money given by your husband?

Ans His rental income, professional income and receipt from the sale of agricultural land.

Q.18 Have you reflected the above transaction and source for the above purchase in your return of income or books of account.

Ans No, I don't maintain any regular books of accounts and I have filled my income tax .returns.

Q.19 Did you file your balance sheet in your income tax return?

Ans No, I have not filled my balance sheet as my income was computed on estimated basis

Q.20 If you have not filled your balance sheet then where is the above transactions reflected?

Ans The purchase is from my income and my income is from estimated basis only and from rental income.

Ld. DR further submitted that the additions have been made on the basis of documents found during the course of search and seizure operation which are evident from the above submissions recorded in the question-answers as noted above, it is clear that the assessee had two bank accounts which has been noted by the authorities below. The assessee could not substantiate the cash deposited into the bank account, therefore, the AO has rightly added unexplained opening cash-in-hand to the total income of the assessee, which could not be substantiated. He also pointed out that in the return of income the

assessee had not disclosed cash in hand in the previous assessment year as well as in the current assessment year and it was also pointed out that the interest income has not been shown in the return of income. In support of his contentions, ld. DR relied on the following decisions :-

i) CIT Vs. ST. Francis Clay Decor Tiles [2016] 70 taxmann.com 234 *(Kerala);*

> ***20.*** *On a plain reading of Section 153A, it is clear that once search is initiated under Section 132 or a requisition is made under Section 132A after the 31st day of May 2003, the Assessing Officer is empowered to issue notice to such person requiring him to furnish return of income in respect of each assessment year following within six assessment years referred to in clause (b). It further treats the returns so filed as if such return were a return required to be furnished under Section 139. So that on a reading of Section 153A(1) it is categoric and clear that once a notice is issued and the Assessing Officer has required the assessee to furnish return for a period of six assessment years as contemplated under clause (b) then the assessee has to furnish all details with respect to each assessment year since the same is treated as a return filed under section 139. It is true that as per the first proviso, the Assessing Officer is bound to assess or reassess the total income with respect to each assessment year following the six assessment years specified in sub-clauses (a) and (b) of Section 153A. However, even if no documents are unearthed or any statement made by the assessee during the course of search under section 132 and no materials are received for the afore-specified period of six years, the assessee is bound to file a return, is the scheme of the provision. Even though the second proviso to Section 153A speaks of abatement of assessment or reassessment pending on the date of the initiation of search within the period of six assessment years specified under the provision that will also not absolve the assessee from his liability to submit returns as provided under Section 153A(1)(a). This being the scheme of the provisions of the Act, the Appellate Tribunal ought to have considered the issue with specific reference to the facts involved in the case and as provided under Section 153A.*
>
> ***21.*** *However, we find that the Tribunal without appreciating the facts and circumstances has proceeded purely on the basis that the cases at hand were covered under the Special Bench decision in All Cargo Logistics Ltd. (supra). In our view the course adopted by the Tribunal was not the proper one to decide the question with regard to the sustainability of the order passed by the First Appellate Authority. Therefore, we are of the considered opinion that the Tribunal has not adopted the right method to decide the issue with regard to the question*

framed in these appeals and therefore, it is only necessary to remand the matter to the Tribunal for fresh consideration.

ii) CIT Vs. Dr. P.Sasikumar [2016] 73 taxmann.com 173 (Kerala) :

I. Section 153A, read with sections 132 and 132A, of the Income-tax Act, 1961 -Search and seizure - Assessment in case of (Submission of returns for six years) -Assessment years 2002-03 to 2008-09 - Whether any material unearthed during search operations or any statement made during course of search by assessee is a valuable piece of evidence in order to invoke section 153A - Held, yes - Whether once search is initiated under section 132 or a requisition is made under section 132A, Assessing Officer is empowered to issue notice to person searched requiring him to furnish return of income in respect of each of following six assessment years as referred to in clause (b) of section 153A(1) - Held, yes -Whether once aforesaid notice is issued, assessee has to furnish all details with respect to each assessment year since same is treated as a return filed under section 139 - Held, yes - Whether even if no documents are unearthed, nor any statement was made by assessee during course of search under section 132 or any material is received for aforespecified period of six years, assessee is bound to file a return - Held, yes - Whether abatement of assessment or reassessment pending on date of initiation of search within period of six assessment years specified under section 153A will also not absolve assessee from his liability to submit returns as provided under section 153A(1)(a) - Held, yes [Paras 5 & 6] [In favour of revenue]

iii) Rajat Tradecom India (P) Ltd. Vs. DCIT, [2009] 120 ITD 48 (Indore):

9. Section 153A would be applicable where a search is initiated under section 132 or books of accounts or other documents or any assets are requisitioned under section 132A of the Act after 31st May, 2003. Therefore, before invoking the provisions of section 153A of the Act it would be necessary to comply with the provisions contained under section 132(1) of the Act. Salient feature of section 132(1) is that where the Director General or Director or the Chief Commissioner or Commissioner, in consequence of information in his possession has reason to believe that any person failed to produce books of accounts or other documents in response to summons or that any person to whom summons have been issued has not or might not or would not produce any books of accounts or documents or that any person is in possession of any money, bullion, jewellery or other valuable article in his possession, which has not been or would not be disclosed for the purpose of this Act (hereinafter referred to as "undisclosed income' or 'property' then the Director General, Director or Chief Commissioner or Commissioner, as the case may be, may authorize any Joint Director, Assistant Director, Assistant Commissioner of Dy. Commissioner of Income tax, called the authorized Officer, to enter and search any building, place, vessel, vehicle or air-craft, etc. where he has reason to suspect that such books of accounts, other documents, money, bullion,

jewellery or other valuable article or thing are kept, break open the lock of any door, etc., search any person who is about to go from the above premises, require any person to account for the books of accounts or documents, seize any such books of accounts or documents, money, bullion, jewellery, etc. or things found as a result of such search and may place mark of identification on any books of accounts or other documents or take copy thereof and to prepare inventory of the same. The purpose of section 132 for issue of warrant of authorization is to unearth, detect and to take possession of the unaccounted/ undisclosed income or property. The mere issue of warrant of authorization without there being search of the premises mentioned in the warrant of authorization would be meaningless and would not serve the purpose of section 132 of the Act. It may be illustrated by taking an example that if warrant of authorization under section 132 is issued in the name of "A" after 31.5.2003 but his premises is not searched for the purpose of executing the warrant of authorization and the warrant of authorization is kept unexecuted, the question arises whether the Assessing Officer still should proceed under section 153A of the Act for the purpose of framing the assessment or reassessment of the six assessment years immediately preceding the assessment years relevant to the previous year in which such search is initiated or requisition is made without executing the search warrant. The answer would be xNo' because it would be a futile exercise. It may be added here that jurisdiction can be assumed by the Assessing Officer to initiate assessment proceedings to issue notices once search is initiated under section 132/requisition made under section 132A. He gets actual jurisdiction only on issue of notice, which could be issued under section 153A (unlike section 158BC(a) in block assessment) with no necessity for inference of escapement of income or underassessment as under section 147. Should it mean that a mere search will enable reassessment proceedings by-passing or ignoring the requirements of section 147. The only part of procedure dispensed with under section 153A of n~ Act on comparison with section 147 is that there is no reason for recording reasons and for approval by higher authorities before issue of notice of reassessment. Further, there cannot be automatic jurisdiction for 6 back years even for those entities which may not be in existence for ail the six years indicating that the provision is expected to be reasonably exercised. It should therefore follow that there should be prima fade inference of liability for invoking jurisdiction under section 153A of the IT Act. We may add that in section 153A(b) it is specifically provided that the Assessing Officer shall assess or reassess the total income of six years immediately preceding the assessment years relevant to the previous year in which such search is conducted or requisition is made. It would , therefore, clarify that not only the warrant of authorization is to be issued in the name of the assessee but search shall have to be necessarily conducted or in case of requisition under section 132A, the requisition is to be made actually. Hon'ble Allahabad High court in the case of Chandra Prakash Agrawal v. CTT; 287 ITR 172 considering the definition of requisition under section 132A of the Act as is referred to in section 158BA of the Act observed that the word "requisition" means taking of actual possession. The requisition is complete only when the

seized books of accounts and other documents which have been requisitioned have been delivered to the requisitioning authority. The provisions of section XIV-B of the Act would come into play only when the books of accounts or other documents or assets are actually received by the Assessing Officer pursuant to the requisition made under section 132A. It was held –

Held, that no search under section 132 had been conducted by the Income-tax Department. The search, if any, was conducted on June 7/8 of 2001 by the Central Excise Department. The Income-tax Department had sent a requisition on March 27, 2002 under section 132A of the Act requisitioning the books of accounts and other documents seized by the Central Excise Department The record of the proceeding dated April 18, 2002 showed that the requisition was not fulfily executed as all the books of account and other documents had not been delivered to the requisitioning authority. The proceedings initiated under section 148 were valid. However in the proceedings for reassessment under section 148 of the Act, materia/ or evidence relatable to the documents, for which the requisition had been sent under section 132A could not be taken into consideration. "

10. Considering the above provisions as noted above in the light of the provisions of section 153A of the Act, it would be clear that once the warrant of authorization or requisition is issued and search is conducted, Panchnama is drawn, the completed assessments for ail the relevant years would get reopened irrespective of whether any incriminating material is found or not in relation to a particular assessment year. However the warrant of authorization shall have to be executed by the authorized Officer in order to justify invoking of the jurisdiction by the Assessing Officer under section 153A of the Act.

Finally, the ld. DR submitted that the case laws relied on by the ld. AR of the assessee are not applicable in the present case.

11. After hearing both the sides and perusing the entire material available on record and the orders of authorities below, we observe that in the assessment order the AO has mentioned that there was two bank account unearthed during the course of search and seizure operation which are supported by the statements recorded during the course of search and seizure procedings that there was two bank accounts have been maintained in the name of the assessee in Andhra

Bank and State Bank of India. In the impugned assessment year, the assessee has deposited cash in both the bank accounts and has utilized for certain payments, which are evident from the cash-flow statements filed by the assessee along with date-wise cash book. In the paper book at page No.18, the assessee has shown summary of cash-flow statement for the year ending 31.03.2010 which as under :-

NARAYANACHETTY ROJA, RAYAGADA
CASHFLOW STATEMENT AS ON31-03-2010

	Particulars	Amount		Particulars	Amount
To	*Opening Balance Cash*	*854,567.64*	*By*	*Municipal Tax*	*2,400.00*
	Andhra Bank SB A/c.	*4,017.00*			
	SBI SB A/c.	*1,755.36*	*By*	*Investment in Agrigold*	*18,000.00*
To	*House Property Income*	*228,000.00*	*By*	*Interest on HB Loan*	*78,336.00*
To	*Remuneration from Hotel Sai Int.*	*160,000.00*	*By*	*Repayment of AB BH Loan*	*146,164.00*
To	*Received Rent Advance*		*By*	*Investment in RITAM, Rayagada*	*400,000.00*
To	*Received from N Trinath Rao*		*By*	*LIC Premium*	*50,450.00*
To	*Savings Bank Interest Receipts*	*1,090.00*	*By*	*Purchase of house site at Sai Mandir Road, Rayagada*	*290,000.00*
To	*House Hold Business Income*	*60,000.00*			
				Sahara Deposits	*120,000.00*
			By	*Repayment of Consumer Loan*	*55,000.00*
			By	*Drawings*	*50,000.00*
			By	*Closing Balance Cash*	*80,044.64*
				Andhra Bank SB A/c.	*4,047.00*
				SBI SB A/c.	*14,988.36*
		1,309,430.00			***1,309,430.00***

Further we noted that the AO has made addition on the opening cash balance as shown of Rs.8,54,567/- considering to the previous year's income. We also observe from the cash-flow statement that the assessee has made payments under the different heads but he could not substantiate the opening cash of Rs.6,62,000/- with evidence. We also gone through the copies of income tax returns i.e. ITR-IV filed by the assessee. The assessee has also not shown the closing cash in hand

at appropriate column. In the copy of return of income the assessee has shown income from house property and remuneration from partnership firm and income from household business. We observe from the cash-flow statements the assessee has received savings bank interest of Rs.1090/- containing interest received from Andhra Bank of Rs.147/- and interest from State Bank of India at Rs.943/-, which is evident from the paper book page No.32. These incomes have not been disclosed by the assessee in his return of income. These are the real income which have been received by the assessee in the impugned assessment year which should have been disclosed in the return of income. It is clear from the cash-flow statements that the assessee has made certain payments out of his income and opening cash available with her. It is also clear that the interest income is also part of the income. The AO has doubted the availability of opening cash i.e. payments are also in doubt to the extent of Rs.6,62,000/-. The contention of the assessee is that the additions can only be made on the basis of incriminating material found during the course of search and seizure proceedings and in support of his contention, ld. AR relied on the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra) and drew our attention to para 37 of the said decision. For the sake of clarity we would like to reproduce the summary of the legal

position drawn by the Hon'ble Delhi High Court at para 37, which read as under:-

> ***"37.*** *On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under :*
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> *(i) Once a search takes place under Section 132 of the Act, notice under Section 153 A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
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> *(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
>
> *(iii) The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
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> *(iv) Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*
>
> *(v) In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*
>
> *(vi) Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*
>
> ***(vii) Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."***

Ld. AR inviting our attention to sub-para (vii) of Para 37 of the said decision of the Hon'ble High Court, submitted that in the case of the assessee there is no incriminating material found during the course of search, therefore, as per the decision of the Hon'ble High Court in the above case, the interference by the AO u/s.153A of the Act with the assessment already completed u/s.143(3) of the Act is unjustifiable. However, on careful perusal of the para 36(vii) of the above observations of the Hon'ble High Court, we found that the Hon'ble High Court in the above para has observed that "*Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents* ***or undisclosed income*** *or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."* On going through the assessment order, we found that the AO has found two bank accounts maintained by the assessee in Andhra Bank and State Bank of India and the assessee could not substantiate the credits in the above bank accounts with any supporting evidence, enabling the AO to bring the same to tax of Rs.6,62,000/-considering the income declared by the assessee in the previous year. The assessee has not disclosed to the bank interest income in his return of income which are part of the credit side of the bank accounts maintained in the two

banks by the assessee. The assessee has made payments from the above bank accounts for various purposes, which are clear from the cash flow statements as noted (supra). In our opinion, the case of the assessee is clearly falls within the ambit of the observations of the Hon'ble High Court in para 37(vii) of the above decisions towards **"undisclosed income"**. We, therefore, reject the contention of the assessee that there is no incriminating material found during the course of search by which the AO cannot interfere with the assessment completed originally while making the assessment u/s.153A of the Act. In view of the above, the legal grounds raised by the assessee in Ground Nos.1 to 3 are dismissed.

12. In ground No.4, the ld. AR of the assessee has mentioned that the assessee has taken that the assessee is filing return for the last 20 years but she has submitted only for the last two years cash-flow statement for the assessment year 2008-2009 & 2009-2010. In the order of the CIT(A), it is clear that the assessee has filed income tax return for two years i.e. 2008-2009 & 2009-2010, in which the assessee has shown income of Rs.1,38,920/- and Rs.1,74,560/-, respectively, which has not been denied by the CIT(A) and before the CIT(A), the assessee has also filed cash-flow statements for the last two years and the CIT(A) has also observed that there is low drawings for the last two previous years which is Rs.40,000/- & Rs.50,000/-, respectively. We observe that the

husband of the assessee is also filing return of income and has also shown in the financial statements as withdrawings. On perusal of the assessment order, we find that the AO has considered the income for the assessment year 2009-2010 and has arrived at opening balance of Rs.6,62,000/-. Further on perusal of the CIT(A)'s order, the assessee has filed return of income for the assessment year 2008-2009 also. This return of income has been accepted by the department but the CIT(A) has not given the effect of net cash accruals for the assessment year 2008-2009 for considering the return of income for the A.Y.2008-2009 and cash accruals during the assessment year 2008-2009, the assessee has not produced any balance sheet in the impugned assessment year as well as preceding assessment years. The assessee is directed to produce correct net cash accruals for the assessment year 2008-2009 only to which the assessee will get benefit from the additions made by the AO for doubting the opening cash shown by her. Further we noted from page No.16 of the paper book, the assessee has not shown the details of bank accounts which will effect the cash balance of the assessee. Accordingly, we restore the issue to the file of CIT(A) as per our observations made hereinabove. This ground of appeal of the assessee is allowed for statistical purposes.

13. Thus, appeal of the assessee for A.Y.2010-2011 [IT(SS)A No.101/CTK/2018) is partly allowed for statistical purposes.

14. In appeal of the assessee in IT(SS)A No.102/CTK/2018 for A.Y.2011-2012, the assessee has raised the following grounds :-

1. *For that, the impugned order of Assessment passed U/S.153A read with section 143(3) of the Act is without jurisdiction and without the authority of law, as such, the same being not sustainable in the eye of law, is liable to be quashed in the interest of justice.*

2. *For that, when documents seized during the course of search operation were duly explained by the Assessee and accepted by the learned A.O, hence he should not have disturbed the Assessment Under Section,143(l)(a) of the Act. The impugned additions made in the order of Assessment for Assessment year 2011-12 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

3. *For that, In course of search, no such incriminating materials could be unearthed by the Search Team, the documents seized by the Search Wing were explained by the Assessee during the course post search inquiry as well as during the course of Assessment also. And when there were no such incriminating material found during the course of search and the seized documents, were well explained by the Assessee which were also accepted by the Search Team as well as by the A.O., then he should have accepted the return filed by the Assessee and should have also accepted the Assessment passed U/s.l43(l)(a) of the Act and should not have disturbed the completed Assessment. Hence the impugned additions made in the order of Assessment for Assessment year 2011-12 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

4. *For that, when during the course of Search Assessment proceeding, the Assessee produced day-wise cash flow statement, capital account, ledger account along with cash book and copies of bank statement and when the learned A.O. could not dispute the transactions reflected in these documents, he should not have added Rs.5,22,571.00, treating the same as unexplained difference without considering facts and circumstances of the case, without considering any submission and without considering general principles of accounting in preparation of the capital account and cash flow statement and bank credits.*

5. *For that, the learned Commissioner of Income Tax Appeal should not have confirmed the additions made by assessing officer amounting to Rs.3,00,000 (Three lakhs) received through bank towards sale of shares at par (face value which is equal to cost of acquisition), treating it income of the Assessee, without considering the written submission of the assessee and evidence thereof in this regard i.e., register of shareholders and*

confirmation letter and director's register duly certified by managing director of the company.

6. *For these and other reasons to be adduced at the time of hearing that the assessee prays to accept the appeal and delete the entire addition in interest of natural justice and fair play.*

15. Ground Nos.1 to 3 are relating to legal issue, which we have decided the same in the appeal of the assessee for A.Y.2010-2011 against the assessee. Therefore, the legal grounds raised by the assessee in the present appeal is dismissed.

16. In respect of ground No.4, we find that the AO in the assessment order has observed that the assessee was unable to explain the entire deposits into the bank account resulting into difference of Rs.5,22,571/- has been added to the total income of the assessee. The assessee has produced date-wise cash flow statement and related ledger accounts to substantiate the credit which has not been denied by the authorities below. If all the entries of bank statement are entered into the bank accounts then why the assessee could not explain the difference of Rs.5,22,571/-, therefore, in the interest of justice one more opportunity should be given to the assessee to substantiate the credit of Rs.23,63,007/- in the bank account before the AO. Accordingly, this matter is sent back to the file of AO to decide the same afresh after providing reasonable opportunity of hearing to the assessee. The assessee is also directed to substantiate her claim with sufficient evidence in respect of difference noted by the AO in his

assessment order. This ground of appeal of the assessee is allowed for statistical purposes.

17. Further in respect of ground No.5, the assessee has submitted that Rs.3 lakhs have been received for sale of shares from hotel Sai International Private Limited but the AO has made addition for want of supporting documents to substantiate the claim and the assessee was also unable to substantiate the same before the CIT(A) with supporting evidence. We observe from the paper book filed by the assessee before us containing page No.1 to 77, Annexure-6&7 which were not filed before the authorities below and Annexure-8 relates to the copy of the sale certificates regarding transfer of shares of Hotel Sai International Private Limited, which was also not produced before the authorities below. In the interest of justice, this issue is also sent back to the file of AO for proper adjudication of the case after affording reasonable opportunity of hearing to the assessee. The assessee is also directed to cooperate with the AO for early disposal of the case. This ground of appeal of the assessee is allowed for statistical purposes.

18. Thus, appeal of the assessee for A.Y.2011-2012 in IT(SS)A No.102/CTK/2018 is partly allowed for statistical purposes.

19. In appeal of the assessee in IT(SS)A No.103/CTK/2018 for A.Y.2012-2013, the assessee has raised the following grounds :-

1. *For that, the impugned order of Assessment passed U/S.153A read with section 143(3) of the Act is without jurisdiction and without*

the authority of law, as such, the same being not sustainable in the eye of law, is liable to be quashed in the interest of justice.

2. *For that, when documents seized during the course of search operation were duly explained by the Assessee and accepted by the learned A.O, hence he should not have disturbed the Assessment Under Section,143(l)(a) of the Act. The impugned additions made in the order of Assessment for Assessment year 2012-13 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

3. *For that, In course of search, no such incriminating materials could be unearthed by the Search Team, the documents seized by the Search Wing were explained by the Assessee during the course post search inquiry as well as during the course of Assessment also. And when there were no such incriminating material found during the course of search and the seized documents, were well explained by the Assessee which were also accepted by the Search Team as well as by the A.O., then he should have accepted the return filed by the Assessee and should have also accepted the Assessment passed U/s.l43(1)(a) of the Act and should not have disturbed the completed Assessment. Hence the impugned additions made in the order of Assessment for Assessment year 2012-13 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

4. *For that, when during the course of Search Assessment proceeding, the Assessee produced day-wise cash flow statement, capital account, ledger account along with cash book and copies of bank statement and when the learned A.O. could not dispute the transactions reflected in these documents, he should not have added Rs.76,290.00, treating the same as unexplained difference without considering facts and circumstances of the case, without considering any submission and without considering general principles of accounting in preparation of the capital account and cash flow statement and bank credits.*

5. *For these and other reasons to be adduced at the time of hearing that the assessee prays to accept the appeal and delete the entire addition in interest of natural justice and fair play.*

20. Ground Nos.1 to 3 are relating to legal issue, which we have decided the same in the appeal of the assessee for A.Y.2010-2011 against the assessee. Therefore, the legal grounds raised by the assessee in the present appeal is dismissed.

21. In respect of ground No.4, we find that this ground has been contested by the assessee before the Tribunal for the first time without raising the same before the CIT(A). Accordingly, we restore this issue to the file of CIT(A) to decide the same after providing reasonable opportunity of hearing to the assessee. The assessee is also directed to cooperate with the CIT(A) for early disposal of the case. This ground of appeal of the assessee is allowed for statistical purposes.

22. Thus, appeal of the assessee for A.Y.2012-2013 in IT(SS)A No.103/CTK/2018 is partly allowed for statistical purposes.

23. In appeal of the assessee in IT(SS)A No.104/CTK/2018 for A.Y.2013-2014, the assessee has raised the following grounds :-

1. *For that, the impugned order of Assessment passed U/S.153A read with section 143(3) of the Act is without jurisdiction and without the authority of law, as such, the same being not sustainable in the eye of law, is liable to be quashed in the interest of justice.*

2. *For that, when documents seized during the course of search operation were duly explained by the Assessee and accepted by the learned A.O, hence he should not have disturbed the Assessment Under Section,143(l)(a) of the Act. The impugned additions made in the order of Assessment for Assessment year 2013-14 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

3. *For that, In course of search, no such incriminating materials could be unearthed by the Search Team, the documents seized by the Search Wing were explained by the Assessee during the course post search inquiry as well as during the course of Assessment also. And when there were no such incriminating material found during the course of search and the seized documents, were well explained by the Assessee which were also accepted by the Search Team as well as by the A.O., then he should have accepted the return filed by the Assessee and should have also accepted the Assessment passed U/s.l43(l)(a) of the Act and should not have disturbed the completed Assessment. Hence the impugned additions made in the order of Assessment for Assessment year 2013-14 being not*

sustainable in the eye of law is liable to be deleted in the interest of justice.

4. *For that, when during the course of Search Assessment proceeding, the Assessee produced day-wise cash flow statement, capital account, ledger account along with cash book and copies of bank statement and when the learned A.O. could not dispute the transactions reflected in these documents, he should not have added Rs.14,43,250.00, treating the same as unexplained difference without considering facts and circumstances of the case, without considering any submission and without considering general principles of accounting in preparation of the capital account and cash flow statement and bank credits.*

5. *For that the learned commissioner of income tax appeals should not have confirmed the additions made by assessing officer on account of rent received as advance which was shown as an income for subsequent years, without considering the facts of the case and written submissions of the assessee.*

6. *For that the learned commissioner of income tax appeals should not have confirmed the additions made by assessing officer on account of registration charges amounting to Rs. 28,385.00 borne by the assessee out of drawings shown in cash flow statement without considering the facts of the case and written submissions of the assessee.*

7. *For these and other reasons to be adduced at the time of hearing that the assessee prays to accept the appeal and delete the entire addition in interest of natural justice and fair play.*

24. Ground Nos.1 to 3 are relating to legal issue, which we have decided the same in the appeal of the assessee for A.Y.2010-2011 against the assessee. Therefore, the legal grounds raised by the assessee in the present appeal is dismissed.

25. In respect of ground No.4, we find that the AO in the assessment order has observed that the assessee was unable to explain the entire deposits into the bank account resulting into difference of Rs.14,43,250/- has been added to the total income of the assessee. The assessee has produced date-wise cash flow statement and related

ledger accounts to substantiate the credit which has not been denied by the authorities below. If all the entries of bank statement are entered into the bank accounts then why the assessee could not explain the difference of Rs.14,43,250/-, therefore, in the interest of justice one more opportunity should be given to the assessee to substantiate her claim before the AO. Accordingly, this matter is sent back to the file of AO to decide the same afresh after providing reasonable opportunity of hearing to the assessee. The assessee is also directed to substantiate her claim with sufficient evidence in respect of difference of accounts. This ground of appeal of the assessee is allowed for statistical purposes.

26. Further in respect of ground No.5, we find that during the course of assessment proceedings the assessee could not furnish supporting documents to substantiate her claim. Before us, ld. AR submitted that the rent received by the assessee as advance was already shown as an income for subsequent years. Therefore, in the interest of justice, we send this issue to the file of AO for deciding the issue afresh after affording reasonable opportunity of hearing to the assessee. The assessee is also directed to cooperate with the AO for early disposal of the case. This ground of appeal of the assessee is allowed for statistical purposes.

27. With regard to ground No.6, ld. AR submitted that the registration charges amounting to Rs.28,385/- was borne by the assessee out of drawings shown in the cash-flow statement, therefore, the addition made by the AO and confirmed by the CIT(A) is unjustified. On perusal of the orders of both the authorities below, we find that the assessee could not substantiate her claim either before the AO or before the CIT(A) with any supporting documents. Accordingly, we do not see any reason to interfere with the observations recorded by the CIT(A) in this regard and we uphold the same. Thus, this ground of appeal of the assessee is dismissed.

28. Thus, appeal of the assessee for A.Y.2013-2014 in IT(SS)A No.104/CTK/2018 is partly allowed for statistical purposes.

29. In appeal of the assessee in IT(SS)A No.105/CTK/2018 for A.Y.2014-2015, the assessee has raised the following grounds :-

1. *For that, the impugned order of Assessment passed U/S.153A read with section 143(3) of the Act is without jurisdiction and without the authority of law, as such, the same being not sustainable in the eye of law, is liable to be quashed in the interest of justice.*

2. *For that, when documents seized during the course of search operation were duly explained by the Assessee and accepted by the learned A.O, hence he should not have disturbed the Assessment Under Section,143(1)(a) of the Act. The impugned additions made in the order of Assessment for Assessment year 2014-15 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

3. *For that, In course of search, no such incriminating materials could be unearthed by the Search Team, the documents seized by the Search Wing were explained by the Assessee during the course post search inquiry as well as during the course of Assessment also. And when there were no such incriminating material found during*

the course of search and the seized documents, were well explained by the Assessee which were also accepted by the Search Team as well as by the A.O., then he should have accepted the return filed by the Assessee and should have also accepted the Assessment passed U/s.l43(1)(a) of the Act and should not have disturbed the completed Assessment. Hence the impugned additions made in the order of Assessment for Assessment year 2014-15 being not sustainable in the eye of law is liable to be deleted in the interest of justice.

4. For that the Commissioner of income tax appeal should not have confirmed the additions made by Learned Assessing Officer towards capital gains amounting to Rs.2,33,188. without considering the income of capital gain shown in subsequent years as the complete sale was completed in the assessment year 2015-16.

For these and other reasons to be adduced at the time of hearing that the assessee prays to accept the appeal and delete the entire addition in interest of natural justice and fair play.

30. Ground Nos.1 to 3 are relating to legal issue, which we have decided the same in the appeal of the assessee for A.Y.2010-2011 against the assessee. Therefore, the legal grounds raised by the assessee in the present appeal is dismissed.

31. In respect of ground No.4, we, on perusal of the order of the CIT(A), find that the CIT(A) has already given the relief to the assessee by allowing the appeal of the assessee, therefore, there is no room for the assessee for further grievance before the Tribunal. Accordingly, this ground of appeal of the assessee has become infructuous.

32. Thus, appeal of the assessee for A.Y.2014-2015 in IT(SS)A No.105/CTK/2018 is dismissed.

33. Now, we shall take up the appeal of the assessee in IT(SS)A No.106/CTK/2018 for A.Y.2016-2017, wherein the assessee has raised the following grounds :-

1. *For that, the impugned order of Assessment passed U/S.153A read with section 143(3) of the Act is without jurisdiction and without the authority of law, as such, the same being not sustainable in the eye of law, is liable to be quashed in the interest of justice.*

2. *For that, when documents seized during the course of search operation were duly explained by the Assessee and accepted by the learned A.O, hence he should not have disturbed the Assessment Under Section,143(l)(a) of the Act. The impugned additions made in the order of Assessment for Assessment year 2016-17 being not sustainable in the eye of law is liable to be deleted in the interest of justice.*

3. *For that the Commissioner of income tax (Appeals) should not have confirmed the additions made by Learned Assessing Officer towards capital gains amounting to Rs.21,13,302 towards unexplained gold ornaments and jewellery without considering the facts and circumstances of the case, written submissions of the assessee and evidences filed during the course of appeal.*

4. *For that the learned Commissioner of income tax (Appeals) not considered the acquisition of gold in previous years including the current year for which the copy of the bill is produced and copy of the bills were seized during the course of search and the amount for acquisition was shown in the cash flow statement and capital account and accepted by the assessing officer, not at all considered in appeal.*

   For these and other reasons to be adduced at the time of hearing that the assessee prays to accept the appeal and delete the entire addition in interest of natural justice and fair play.

33. Ground Nos.1 & 2 are relating to legal issue, which we have decided the same in the appeal of the assessee for A.Y.2010-2011 against the assessee. Therefore, the legal grounds raised by the assessee in the present appeal in ground Nos.1 & 2 are dismissed.

34. Ground Nos.3 & 4 are relating to addition made on account of undisclosed investment in gold jewellery.

35. Facts relating to the above grounds are that the Assessing Officer made addition of Rs.25,26,438/- on account of undisclosed investment in gold jewellery as mentioned in para 9 of the assessment order. During the course of search, gold and jewellery of 2417.290 grams valued at Rs.66,57,802/- was found. The AO accepted the source of jewellery of 1500 grams, however, the AO did not accept the source of remaining gold jewellery of 917.29 grams valued at Rs.25,26,438/- and accordingly, the AO added the same into the total income of the assessee. In appeal, the CIT(A) observed that the assessee has explained the investments in gold ornaments and jewellery of 1650 grams amounting to Rs.45,44,500/- and accepted the same, however, the CIT(A) confirmed the remaining gold ornaments and jewellery being 767.29 grams amounting to Rs.21,13,302/- holding the same as unexplained. Against the order of CIT(A), the assessee is in further appeal before the Income Tax Tribunal.

36. Ld. AR before us filed a written submissions which read as under:-

> ***WRITTEN NOTES OF SUBMISSION ON BEHALF OF THE APPELLANT : FACTS: -***
>
> *For that, a Search and Seizure operation U/s.132 of the Income Tax Act,*
>
> *1961 was conducted in the residential premises of the Assessee on 12.02.2016. Consequence to search, Assessment proceeding for*

Assessment year 2016-17 was initiated. During course of search, in the residential premises and from the locker No.75/4 and 145/2 at Indian Overseas Bank, Rayagada, the following gold and jewellery were found and seized.

SI No.	*Particulars of premises searched*	*Gold jewellery found grams*	*Valued at Rs.*	*Seized*
01.	*Residential premises at Sai Mandir Road, Jeypore.*	*70.000 Grams*	*Rs. 1,90,575.00*	*-*
02.	*Locker No.145/2, Indian Overseas Bank, Rayagada (Locker in the joint name of Sri N. Trinath Rao and Smt. N. Roja)*	*891.090 Grams*	*Rs.25,77,370.00*	*880.040 Grams*
03.	*Locker No.75/4, Indian Overseas Bank, Rayagada (Locker in the joint name of Sri N. Trinath Rao and Smt. N. Roja)*	*1456.200 Grams*	*Rs.38,89,857.00*	
		2417.290 Grams	*Rs.66,57,802.00*	*880.040 Grams*

For that, during course of Assessment proceeding, the Assessee explained that, gold jewellery were acquired during marriage as "Stree Dhan" and as gifts from in-laws during the birthday ceremony of her son and daughter. Out of total jewelry found, 600.000 grams jewellery belongs to her mother-in-law and father-in-law. She also submitted a list of family members claiming that, gold and jewellery belong to them, in addition to it, the Assessee also drew attention to the seized materials, cash flow statements and explained that total gold jewellery were acquired in couple of years and not in this year. Following the CBDT instruction, the learned A.O. allowed only 1500.000 grams and treated the balance gold jewellery weighing v 917.29 grams valued at Rs.25,26,438.00 as acquired out of unaccounted sources and added to the total income of the Assessee as unexplained investment.

For that, being aggrieved with the impugned addition, Assessee preferred appeal before the learned C.I.T(A)-2, Bhubaneswar. During course of hearing of appeal, the Appellant drew attention of the learned C.I.T(A) to the seized materials as well as the cash flow statement for last years and of this year. The learned C.I.T(A) allowed only 150.000 grams over and above 1500.000 grams allowed by the learned A.O. and confirmed the investment in remaining gold ornaments and jewelleries being 767.29 grams valued at Rs.21,13,302.00, treating as unexplained investment. Being aggrieved with the order passed by the forums below, this present appeal is preferred for kind interference of this Hon'ble Tribunal.

<u>SUBMISSIONS</u>.-

For that, the learned C.I.T(A) has committed gross error in fact as well as of law in not allowing the addition of 917.29 grams of gold and jewellery valued at Rs.25,26,438.00 made by the learned A.O. The findings given by the learned C.I.T.(A) in paragraph No.4.6 at page No.4 of his order is completely illegal, wrong and contrary to the facts on

record. Therefore, the addition of gold and jewellery of 767.29 grams valued at Rs.21,13,302.00 being not sustainable in the eye of law, needs to be deleted in the interest of justice.

For that, the Appellant wants to draw kind attention of this Hon'ble Tribunal to Annexure-3 at page No. 16 and 17 of the Paper Book that is the written submission filed before C.I.T.(A). Further, the Assessee also drew attention to Annexure-5 to Annexure-8 i.e. from Page No.36 to 96 of the Paper Book, these documents formed part of seized materials and were well available before the Investigation Wing, the A.O as well as before the learned C.I.T.(A), therefore the findings given by him that, "for the remaining gold jewellery, the Appellant has to furnish not only the bills but also evidences of source of investment, which has not been done by the Appellant" is completely wrong and contrary to the facts on record, hence the consequential addition confirmed by him basing on these findings being not sustainable in the eye of law is liable to be quashed in the interest of justice.

For that, when from the documents seized, it is clearly evident that, investments in gold and jewellery were made in couple of years and out of total gold and jewellery found, only 468.78 grams were purchased by the Appellant and her husband during the year and when, vide Annexure-4 i.e. in the cash flow statement from page No. 19 to 27 of the Paper Book, each year's investments was clearly disclosed and accepted by the Forums below, the learned C.I.T(A) has committed gross error of law in confirming gold and jewellery weighing of 767.29 grams amounting to Rs.21,13,302.00, treating it as unexplained investment of this year. The impugned addition, thus being contrary to the facts on record is not sustainable in the eye of law, hence needs to be deleted in the interest of justice.

7. For that, the Appellant wants to draw kind attention of the Hon'ble Tribunal to first paragraph of Page No.5 of the impugned order of Assessment, wherein the learned A.O. has observed that, ***"further the Assessee has submitted that, they have purchased 400.000 grams of bullion during the financial year 2015-16 and 282.000 grams during the financial year 2011-12, 2013-14, 2014-15 and 2015-16. From the above, it is clear that, the Assessee has explained the sources with regard to acquisition of gold jewellery weighing around 682.000 grams".*** *Thereafter, the Assessee drew attention of the learned A.O. to the CBDT circular and submitted that, in view of this circular and judicial pronouncements 1550.000 grams of gold and jewellery of Assessee and of her family members should be treated as explained. It was also explained that, 100.000 grams of gold and jewellery belongs to sister-in-law who resides in Rayagada. Even though the learned A.O. has accepted the fact that, 682.000 grams of gold jewelry over and above that 1550.000 grams were explained but while completing the Assessment has allowed only 1500.000 grams and confirmed the addition of 917.29 grams. The impugned findings of the learned A.O. and consequential addition made by him runs contrary to*

his own finding of fact, as such, the impugned addition made by him, needs to be deleted in the interest of justice.

8. For that, the Assessee/Appellant submits herewith a detail chart of gold and jewelleries owned and purchased by her for better appreciation of facts;

1. Total gold and jewelry found from residence and locker 2417.290 grams

2. Learned A.O. allowed during Assessment 1500.000 grams

3. Learned C.I.T(A) allowed in appeal 150.000 grams

Total 1650.000 grams

Now dispute is for 767.290 grams

Sl.No	***Weight***	***Date of Purchase***	***Reference to Paper Book***
1.	*43.91 grams*	*04.03.2012*	*Page No.37 & 38 (NTR-05-67)*
2.	*23.75 grams*	*31.05.2013*	*Page No.39(NTR-05-59)*
3.	*93.19 grams*	*05.04.2014*	*Page No.40 (NTR-05-65)*
4.	*5.95 grams*	*11.02.2015*	*Page No.41 (NTR-05-62)*
5.	*19.16 grams*	*14.03.2015*	*Page No.42 (NTR-05-63)*
6.	*27.84 grams*	*16.03.2015*	*Page No.43 (NTR-05-64)*
7.	*68.78 grams*	*14.08.2015*	*Page No.44 (NTR-05-66)*
8.	*85.29 grams*	*(F.Y.2008-09 after availing bank loan*	*Page No.51 to 54*
	367.87 grams		
9.	*15.00 grams*	*23.12.2015*	*Page No.48 (bill enclosed)*
10.	*18.00 grams*	*25.12.2015*	*Page No.48 (bill enclosed)*
11.	*18.00 grams*	*28.12.2015*	*Page No.48 (bill enclosed)*
12.	*14.00 grams*	*31.12.2015*	*Page No.48 (bill enclosed)*
13.	*18.00 grams*	*02.01.2016*	*Page No.49 (bill enclosed)*
14.	*17.00 grams*	*04.01.2016*	*Page No.49 (bill enclosed)*
15.	*18.00 grams*	*11.01.2016*	*Page No.49 (bill enclosed)*
16.	*15.00 grams*	*12.01.2016*	*Page No.49 (bill enclosed)*
17.	*14.00 grams*	*14.01.2016*	*Page No.50 (bill enclosed)*
18.	*18.00 grams*	*16.01.2016*	*Page No.50 (bill enclosed)*
19.	*17.00 grams*	*18.01.2016*	*Page No.50 (bill enclosed)*
20.	*18.00 grams*	*19.01.2016*	*Page No.50 (bill enclosed)*
Total	*567.87 grams*		

9. That, total 567.87 grams gold jewellery were purchased by the Assessee whose bills and vouchers and details were produced by the Assessee at the time of Assessment along with cash flow statement explaining the source of availability of fund for purchase of jewellery. In none of the years, the learned A.O could question the purchase of gold jewellery. Therefore gold and jewellery purchased in previous years accepted by the forums below cannot be questioned in this year. That apart, gold and jewellery purchased during this year are well explainable and the learned A.O has accepted the cash flow statement. Once he has accepted purchase of Gold and jewellery for this year in his

order of Assessment in 1st para at page No.5, same cannot be disallowed again. Therefore the impugned addition needs to be deleted in the interest of justice.

10. That, the Forums below have committed gross error of law as well as in fact in making addition of gold and jewelleries purchased by the husband of the Assessee/Appellant in her hand. The Assessee submits herewith a detail chart of gold and jewelleries purchased by her husband for reference and record.

Sl.No.	*Weight*	*Date of purchase*	*Reference to paper book*
1.	*15.00 grams*	*23.12.2015*	*Page No.46 (bill enclosed)*
2.	*18.00 grams*	*25.12.2015*	*Page No.46 (bill enclosed)*
3.	*18.00 grams*	*28.12.2015*	*Page No.46 (bill enclosed)*
4.	*14.00 grams*	*31.12.2015*	*Page No.46 (bill enclosed)*
5.	*18.00 grams*	*02.01.2016*	*Page No.47 (bill enclosed)*
6.	*17.00 grams*	*04.01.2016*	*Page No.47 (bill enclosed)*
7.	*18.00 grams*	*11.01.2016*	*Page No.47 (bill enclosed)*
8.	*15.00 grams*	*12.01.2016*	*Page No.47 (bill enclosed)*
9.	*14.00 grams*	*14.01.2016*	*Page No.45 (bill enclosed)*
10.	*18.00 grams*	*16.01.2016*	*Page No.45 (bill enclosed)*
11.	*17.00 grams*	*18.01.2016*	*Page No.45 (bill enclosed)*
12.	*18.00 grams*	*19.01.2016*	*Page No.45 (bill enclosed)*
Total	*200.00 grams*		

That, when the husband of the Assessee had declared the gold and jewellery purchased by him of 200.00 grams during the year in his return of income and produced day-wise cash flow and cash flow statement which was accepted by the learned A.O., he is not authorized under the law to disallow and to add the same in the hand of the Assessee/Appellant. The learned C.I.T(A) also should not have ignored the explanations and evidences produced before him and before the learned A.O. as well as the seized materials while confirming addition of 767.290 grams valued at Rs.21,13,302.00. The impugned addition, thus runs contrary to the facts available on record, as such, the same is not sustainable in the eye of law, hence needs to be deleted in the interest of justice.

That, in the family of the Assessee, the Assessee has been staying with her husband, father-in-law, mother-in-law, daughter and son. As per the CBDT circular, the eligibility of gold and jewellery owned by them are of 1550.00 grams. The sister-in-law of the Assessee has kept 100.00 grams of jewellery in her bank locker as she had no locker account. Further, from the documents seized as NTR-05, it can be found that, the Assessee in couple of years had purchased 282.58 grams and 85.29 grams of gold and jewellery were purchased after taking consumer loan of Rs. 1,00,000.00 from Andhra Bank in the financial year 2008-09. Further, the Assessee and her husband had purchased 200.00 grams each totaling to 400.00 grams of gold and jewellery. So from the evidences adduced before the Forums below, it is amply clear that, during the year, only 268.78 grams of gold and jewellery were purchased during the year, whose source were explained and accepted by the learned A.O. Therefore,

from the order passed by the learned C.I.T.(A), it is amply clear that, he failed to appreciate the material facts on record and wrongfully treated that, gold and jewellery weighing of 767.29 grams remained unexplained valued at Rs.21,13,302.00. The impugned consequential addition made by him, thus is completely illegal, contrary to the facts on record and because of wrong assumption of facts, as such, the impugned addition being not sustainable in the eye of law, needs to be deleted in the interest of justice.

Apart from the above, ld. AR further submitted that the assessee has already disclosed the acquisition of gold in the previous years including the current year before the Assessing Officer as well as before the CIT(A). However, both the authorities have not taken into consideration the submissions and the evidences as filed by the assessee. Therefore, the total addition made on account of undisclosed investment in gold jewellery may kindly be deleted.

37. On the other hand, ld. DR relied on the order of authorities below. Further, he submitted that the Circular issued by the CBDT No. No. 1916, dated 11-5-1994 is only for the non-seizure of jewellery by the searched team but sources have to be explained by the assessee at the time of assessment. The authorities below have rightly decided the issue in detailed manner after considering the documents found and submitted by the assessee. Therefore, the order of authorities below should be restored.

38. After considering the submissions of both the parties and perusing the entire material available on record, we find that the AO made addition on account of unexplained investment in gold and

jewellery of 2417.290 grams as found and seized during the course of search in the residential premises and the Locker No.75/4 & 145/2 of the assessee at Indian Overseas Bank, Rayagada. During the course of assessment proceedings the AO considered 1500 grams of gold jewllery and bullion to be acquired out of explained sources and made addition of remaining 917.29 grams valuing at Rs.25,26,438/- treating the same as acquired out of the unaccounted source of income and added the same to the total income of the assessee. In first appellate proceedings, the CIT(A) considering the submissions of the assessee has accepted that the source of 1650 grams gold and jewellery has been explained and confirmed the remaining gold and jewllery found and seized during the course of search. On perusal of the assessment order, it is found that the AO himself in first para at page No.5 of the assessment order has mentioned that the assessee has explained the sources with regard to acquisition of gold jewellery weighing around 682 grams. The ld. AR before vehemently submitted that even though the A.O. has accepted the fact that 682.000 grams of gold jewelry over and above that 1550.000 grams were explained but while completing the Assessment has allowed only 1500.000 grams and confirmed the addition of 917.29 grams, therefore, impugned addition made by him, needs to be deleted. Ld. AR also drew our attention to the statement of details of gold purchased by the assessee at page 36 of the paper book

along with bills. On careful perusal of the same, we find that 282.58 grams gold and jewllery were in the acquisition of the assessee. It was also submitted by the ld. AR that the assessee and her husband had purchased 200.00 grams each totaling to 400 grams of gold and jewellery. From the above submissions of the assessee as well as the observations made by the AO, we are of the opinion that the AO has rightly noted that the sources of 682 grams gold and jewellery have been explained. Thus, out of 767.29 grams gold ornaments and jewellery as confirmed by the CIT(A), 682 grams have to be treated as explained. However, with regard to remaining 85.29 grams, we do not see any corroborative evidence has been filed by the assessee.

39. To support our above view, reliance can be placed on the decision of Hon'ble Rajasthan High Court in the case of CIT Vs. Satya Narain Patni [2014] 46 taxmann.com 440 (Rajasthan), any jewellery, found in possession of a married lady to the extent of 500 gms., 250 gms. per unmarried lady and 100 gms per male member of the family will not be questioned about its source and acquisition.

40. Further, in case of CIT v. Ghanshyam Das Johri [2014] 41 taxmann.com 295(Allahabad) the Hon'ble High Court held that if one goes with CBDT Instruction No. 1916, dated 11-5-1994 and ratio laid down in case of Smt. Pati Devi v. ITO [1999] 240 ITR 727 (Kar.) then a married lady of reputed family is expected to own 500 gm. Ornaments.

Therefore, jewellery found in possession to that extent could not be treated as undisclosed investment.

41. Reliance can also be placed on the decision Delhi Bench of the Tribunal in the case of Mrs. Divya Devi Vs. ACIT in ITA No.6397/Del/2012, order dated 16-05-2014, wherein it is observed that it is true that the CBDT Instruction No. 1916, dt. 11th may, 1996 lays down guidelines for seizure of jewellery and ornaments. In the course of search, the same takes into account the quantity of jewellery which would generally be held by family members of an assessee belonging to an ordinary Hindu household. **In the circumstances, unless the Revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery stated in the circular stands explained.**

42. Further in the case of Shri Jerambhai B. Khokharia in ITA No.2613/Ahd/2009, the Ahmedabad Tribunal vide order dated 05.11.2015, has held that it is ample clear that gold jewellery found to the extent of limit mentioned in the circular is treated as explained and this can be clearly applied on the assessee's case, wherein no specific deduction of gold jewellery possessed by family members and grand children was given by the Assessing Officer from the total gold jewellery found at the time of search and seizure operation and differential gold jewellery of 1924.22 gr. is the gold jewellery possessed

by the female members and minor children of the assessee's joint family and this quantity of 1924.22 gr. is well within the total limit of jewellery at 2100 grms. as per the CBDT instruction no.1916 dated 11.05.1994.

43. As per the above quoted judicial pronouncements and the facts and circumstances of the case, the assessee deserves to get benefit of the aforesaid CBDT Instruction No.1916, dated 11.05.1994, according to which 1650 grams is not to be treated as undisclosed investment. The CIT(A) has also held that the assessee is entitled to have 1550 grams of gold as per the following family members :-

N. Roja	*500 gms.*
N. Trinath Rao (Husband)	*100 gms.*
N. Rushikesava Rao (Father-in-law)	*100 gms.*
J.N. Gajalaxmi(Mother-in-law)	*500 gms.*
N. Aiswarya (Daughter)	*250 gms.*
N. Akarsh (Son)	*100 gms.*
Total	*1550 gms.*

Further the CIT(A) held that the source of 100 gms. of gold jewellery belonging to the sister-in-law of the assessee, who resides at Rayagada is also treated as explained on the strength of her affidavit and for the reasons that she does not have locker at a place where she resides. Accordingly, the CIT(A) granted relief 1650 grams of gold and jewellery to the assessee. Further, we noted that the AO has also clearly mentioned in the assessment order that 682 grams of gold and jewellery has been explained by the assessee before him. Once the

revenue authorities accept the source explained by the assessee, in such case there is no further room for treating the same as undisclosed investment of the assessee. Now, the remaining 85.29 grams of gold and jewellery has not been explained by the assessee. Therefore, we confirm 85.29 grams of gold and jewellery out of 767.29 grams upheld by the CIT(A) and direct the AO to delete the addition on the exact value of 682 grams gold and jewellery. Ground Nos.3 & 4 are partly allowed.

44. In the result, appeal of the assessee i.e IT(SS)A Nos.101 to 104/CTK/2018 are partly allowed for statistical purposes and IT(SS)A No.105/CTK/2018 is dismissed and IT(SS)A No.106/CTK/2018 is partly allowed.

Order pronounced in the open court on 04/06/2020.

Sd/-	**Sd/-**
(C.M.GARG)	**(L.P.SAHU)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कटक Cuttack; दिनांक Dated 04/06/2020

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
   N.Roja,
   Sai Mandir Road,
   New Colony, Rayagada-765001
2. प्रत्यर्थी / The Respondent-
   ACIT, Central Circle-1, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy// **आदेशानुसार**/ BY ORDER,

(**Senior Private Secretary**)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack