

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH: JAIPUR
(BEFORE SHRI R.P. TOLANI AND SHRI T.R. MEENA)

I.T.A. No. 187/JP/2012
Asstt. Year- 2007-08
PAN No. AAIPV 1275 E

Shri Anuj Kumar Varshney,
C-8, Laxmi Narayan Puri,
Outside Surajpole Gate,
Jaipur.

Vrs.

The I.T.O.
Ward 5(4), Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 253/JP/2012
Asstt. Year- 2007-08
PAN No. AABFB 8840 N

The I.T.O.
Ward 2(1), Jaipur.

Vrs.

M/s Bhansali Trading Corporation,
Shah Bhawan, Ghee Walon Ka Rasta,
Johri Bazar, Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 13/JP/2010
Asstt. Year- 2006-07
PAN No. AAOPD 6587 H

Shri Deepak Dalela,
C-28, Piyush Path,
Bapu Nagar, Jaipur.

Vrs.

The I.T.O.
Ward 6(3),
Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 241/JP/2012
Asstt. Year- 2008-09
PAN No. AAGFG 3052 L

G.B. Impex,
B-172, Rajendra Marg,
Bapu Nagar, Jaipur.

Vrs.

The I.T.O.
Ward 6(3), Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 1014/JP/2011
Asstt. Year- 2008-09
PAN No. AABFJ 1456 A

M/s Jewels Emporium,
M.I. Road, Jaipur.

Vrs.

The C.I.T.-I
Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 1034/JP/2011
Asstt. Year- 2008-09
PAN No. AABFJ 1456 A

The A.C.I.T.,
Circle-2, Jaipur.
(Appellant)

Vrs.

M/s Jewels Emporium
M.I. Road, Jaipur.
(Respondent)

I.T.A. No. 891/JP/2011
Asstt. Year- 2007-08
PAN No. ARBPS 9297 D

Shri Hemant Srivastava,
4-KA-9, Jawahar Nagar,
Jaipur.

Vrs.

The I.T.O.,
Ward 6(1)
Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 342/JP/2012
Asstt. Year- 2007-08
PAN No. AAAPH 5802 K

The I.T.O.
Ward 2(1), Jaipur.

(Appellant)

Vrs.

M/s H.K. Impex,
2260, Takiya Yaqeen Shah
Chokri Topkhana, Hazoori, Jaipur.

(Respondent)

I.T.A. No. 322/JP/2012
Asstt. Year- 2007-08
PAN No. AAAPH 5802 K

M/s H.K. Impex,
2260, Takiya Yaqeen Shah
Chokri Topkhana, Hazoori, Jaipur.

(Appellant)

Vrs.

The I.T.O.
Ward 2(1), Jaipur.

(Respondent)

I.T.A. No. 1053/JP/2011
Asstt. Year- 2008-09
PAN No. AABCK 8555 A

The I.T.O.
Ward 1(1), Jaipur.

(Appellant)

Vrs.

M/s Kinu Baba Jewellery P. Ltd.
41, K-Tower, Mahaveer Marg,
C- Scheme, Jaipur.

(Respondent)

C.O. No. 13/JP/2012
(Arising out of I.T.A. No. 1053/JP/2011)
Asstt. Year- 2008-09
PAN No. AABCK 8555 A

M/s Kinu Baba Jewellery P. Ltd.
41, K-Tower, Mahaveer Marg,
C- Scheme, Jaipur.

The I.T.O.
Vrs. Ward 1(1), Jaipur.

(Objector)

(Respondent)

I.T.A. No. 831/JP/2011
Asstt. Year- 2003-04
PAN No. AAAFL 5913 D

M/s Lakhi Gems,
395, II Floor,
Hanuman Ji Ka Rasta,
Johri Bazar, Jaipur.

Vrs. The I.T.O.,
Ward 2(1)
Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 892/JP/2011
Asstt. Year- 2003-04
PAN No. AAAFL 5913 D

The I.T.O.,
Ward 1(1)
Jaipur.

Vrs. M/s Lakhi Gems,
395, II Floor, Hanuman Ji
Ka Rasta, Johari Bazar, Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 52/JP/2012
Asstt. Year- 2008-09
PAN No. AAEHK 0120 M

Kumud Chand Jain HUF,
P/o- M/s K.S. Exports,
63, Shopping Centre,
Near Pittal Factory, Bani Park,
Jaipur.

Vrs.

The I.T.O.
Ward 3(2), Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 315/JP/2012
Asstt. Year- 2008-09
PAN No. ABXPS 3597 C

The I.T.O.
Ward 2(1), Jaipur.

Vrs.

Shri Ravi Sancheti,
176, Haldiyan Ka Rasta,
Johari Bazar, Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 1127/JP/2011
Asstt. Year- 2007-08
PAN No. AAEP A 8930 A

Shri Rajendra Kumar Agarwal,
Prop. M/s Unique Palace,
A-1, Tiwadi Ji Ka Bagh,
Adarsh Nagar, Jaipur.

Vrs.

The I.T.O.
Ward 5(2), Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 871/JP/2011
Asstt. Year- 2007-08
PAN No. ADJPJ 5988 N

Smt. Sharmila Jain,
F-15-16, 1st Floor,
Rashtradoot Press, Chameli Wala
Market, Jaipur.

Vrs.

The I.T.O.,
Ward 6(1)
Jaipur.

(Appellant)

(Respondent)

I.T.A. No. 1030/JP/2011
Asstt. Year- 2007-08
PAN No. AAGFA 5240 L

M/s Silvex Images,
1, Marium Palace,
Chameliwala Market, Jaipur.

Vrs.

The Addl. C.I.T.
Range-1, Jaipur.

(Appellant)

(Respondent)

Assessee by :- Shri G.M. Mehta, S.M. Singhvi,
Shri P.C. Parwal & Shri Deepak
Dalela, Shri Rajiv Sogani,
Shri Manish Agarwal

Department by :- Shri D.C. Sharma, Neena Jeph,
Shri A.K. Khandelwal, Shri Rajesh
Ojha.

Date of hearing : 04/09/2014, 01/10/2014, 03/09/2014,
09/09/2014.

Date of pronouncement : 22/10/2014

ORDER**PER: BENCH****General written submissions made by the Revenue.**

This is a set of appeals dealing with the cases of various dealers of precious and semi precious gems and stones. In all these cases one of the common ground is in respect of unverifiable purchases. Consequently many of such appeals are heard together and disposed of by this common order. Jaipur city is well known in India and abroad for the business of gems and jewellery. Various types of jewellery are being traded as well as exported out of India. Consequent to the Income Tax Department, received information that larger number of gems and jewellery dealers have been indulging in obtaining fake purchase bills to inflate their purchases. Consequently, the Income Tax Department had conducted search/survey from time to time to stop the mal practices of bogus/unverifiable purchases. There are number of parties from both the sides i.e. obtaining the fake bills and providing the fake bills, engaged in the business of gems and jewellery, who promote such practices for reducing their tax liabilities. It created aberrations in the whole system of trading as well as exporting business system of Jaipur gems and

jewellery market. It also disheartens the honest tax payers who do not resort to such mal practices and paid their legitimate taxes. On the other side, it emboldens the dishonest tax payers who resort to such practice. Numerous instances came to light through search and survey actions carried out by the department from time to time to reveal that the assesseees have shown purchases of gems and jewellery from certain parties, which were involved in racket of providing only sale bills without any actual sales to dealers in the trade of gems and jewellery.

2. In the year 2003, a search and seizure operation was carried out by the department in the case of M/s Sanjeev Prakashan Group, Motisons and others thereafter detailed investigation was carried out by the Investigation Wing of the Department about the affairs and activities of some of the parties and it was found that some of the parties are involved in the racket of providing bills without actual delivery of goods to different parties in their trade of gems and jewellery. The modus operandi of these parties was that the sale bills were issues and the cheques received against the bills were immediately withdrawn from the bank in cash in the next few days.

(ii) In F.Y. 2007-08, BCTT of the Income Tax Department conducted survey in various cases. It was found that various persons were

indulged in the practice of issuing bogus bills in the trade of gems and jewellery. Many of such dealers categorically admitted in their respective statements recorded on oath that they were issuing bills only and not real trade was conducted by them. It was found that actually no physical delivery of goods was being given against the bills issued and after receiving the cheques of equal amount from the interested parties, cash was withdrawn from the bank accounts where these cheques were deposited. These persons claimed to be charging commission @ 0.20% to 0.25% for issuing these bogus sales bills. In some cases, the commission was higher as much as 0.5% to 0.6%. In case of Kumud Chand Jain, proprietor of M/s K.S. Exports, 63, Shopping Centre, Near Pittal Factory, Bani Park, Jaipur, survey authorization was issued by the BCTT but could not be executed as the assessee was not existent at the given address.

(iii) Search and seizure operation was carried out in case of M/s Haldia group on 20/4/2007 engaged in the business of trading of precious and semi precious stones. Shri Ravi Haldia in his statement categorically admitted that he had obtained bogus bills from different parties in F.Y. 2004-05 to regularize the purchases made in cash. He listed out the names of such parties, who were issuing bogus bills. In various cases, the statement of Shri

Haldia was used as an evidence against the assessee, who have obtained the bogus/unverifiable purchase bills on similar pattern.

(iv) A search seizure action was carried out on M/s Clarity Gold Group, Jaipur on 20/5/2009. Shri Khushi Kumar Ameriya, Director (Main person) of the group admitted that more than 95% of the total sales and purchases of M/s Clarity Gold Pvt. Ltd. and M/s Marine Minerals & Herbal Remedies Pvt. Ltd. were bogus. Shri Ameriya also explained that such bogus purchase and sale bills were obtained on commission basis through a set of brokers operating in Jaipur namely Lalwani Group, Vijay Group etc.

3. This resulted in books trading results and taxable income being unverifiable. During the course of assessment proceedings, general defects pointed by the learned Assessing Officer for rejecting the books of account are as under:-

- :- No quantitative day to day stock register is maintained with item wise specification.
- :- Valuation of stock was done lot wise on estimate basis whereas in case of semi precious stones value varies according to shape, colour, cut, size, transparency, etc.
- :- Bogus bills were obtained and claimed as purchase expenses.

- :- Bogus bill providers were either not produced, or not found existent at the address provided by the assessee. Those, who appeared, admitted to the fact of issuance of bogus bills against charging some nominal commission.
- :- Payments, though, shown to be made by A/c Payee cheques, in some cases payees accepted that after deducting commission, remainder was refunded by cash.
- :- Assesseees are generally not traders but engaged in business of manufacturing of Gems and Jewellery.
- :- Name, address, PAN (in some cases) and confirmations of such parties were given- Assessee claimed it as sufficient compliance and discharge of onus of proving the expenditure.
- :- Assesseees were asked to produce the so-called sellers from whom bills were obtained- However, failed to do so despite sufficient opportunities.
- :- Summons issued u/s 131 remained uncomplied as none appeared or summons could not be served because of defective address.
- :- Proper show cause notices were issued indicating defects in maintaining the books of accounts U/s 145(3) proposing

rejection thereof and assessments were accordingly framed thereafter.

4. As the assessee has not been maintaining the stock register or not maintaining it on the basis of quality wise. It is undisputed that in this line of trade, jewellery is manufactured and traded on the basis of carrate, clarity, colour and cut of the embedded stones. The closing stocks were not verifiable in absence of items and quality wise tally which proved that the closing stock was taken by the assessee on estimated basis as it suited them. The assessee was not able to produce bogus bills provided for examination. Under these circumstances, the learned Assessing Officers completed the assessment after rejecting the book result U/s 145(3) of the Act. In all the cases, the appellants have not pressed this ground of appeal about rejection of book result U/s 145(3) of the Act.

5. When books have been rejected U/s 145(3) then only alternative before the Assessing Officer is to estimate the income of the assessee to best of his judgment. The learned CIT DR argued that once the books of accounts are rejected U/s 145(3) of the Act, the learned Assessing Officer is empowered to make assessment in the manner provided in Section 144 of the Act i.e. best judgment assessment. Obviously, the estimation should not be arbitrary and

based on material available on record and should be made after providing opportunity of being heard to the assessee. It should not be biased, unscientific and capricious. Learned D.R. relied upon the decisions of Hon'ble Supreme Court in the case of HM Esufali HM Abdulla 90 ITR 271 (SC) and M/s Kanchwala Gems Pvt. Ltd. Vs. JCIT 288 ITR 10 (SC). It is further argued that the Hon'ble courts had estimated income in such type of cases ranging from 100% to 25% of net profit. In some of the cases, lump sum additions were also confirmed by the Hon'ble Courts. The learned Assessing Officer more or less had estimated the income @ 25% of bogus/unverifiable purchases. He further relied upon following case laws:

(a) 100% disallowance out of bogus/unverifiable purchases:

1. CIT Vs. La Medica (2001) 250 ITR 575 (Del.)
2. Sri Ganesh Rice Mills Vs. CIT (2007) 294 ITR 316 (All)
3. Khandelwal Trading Co. Vs. ACIT (1996) 55 TTJ (JP) 261.

(b) 25% disallowance out of bogus/unverifiable purchases:

1. Sanjay Oil Cake Industries Vs. CIT (2008) 316 ITR 274 (Guj)
2. Vijay Proteins Ltd. Vs. ACIT 58 ITD 428 (Abad).
3. M/s Nand Kishore Meghraj Jewellers, Jaipur CO No. 105/JP/2009 arising out of ITA No. 433/JP/2009 by ITAT Jaipur.

4. M/s Trident Jewellers ITAT Jaipur ITA No. 552/JP/2013.

(c) Estimation of GP based on past history:

1. CIT Vs. Amrapali Jewels (P) Ltd. (2012) 65 DTR (Raj) 196 for A.Y. 2005-06.
2. CIT Vs. Inani Marble Pvt. Ltd. 316 ITR 125 (Raj)
3. CIT Vs. Gotan Lime Khanij Udyog 256 ITR 243 (Raj)
4. ITO Vs M/s GB Impex (A.Y. 2007-08) ITA No. 1263/JP/2010 and CO No. 5/JP/2011.
5. DCIT Vs M/s Gems paradise (A.Y. 2006-07) ITA No. 700/JP/2009 and CO No. 144/JP/2009.

(d) Lump sum disallowance

1. ITO Vs. M/s Agrasem Jewellers (A.Y. 2007-08) ITA No. 861/JP/2010 and CO No. 68/JP/2010 and ITO Vs. M/s Mohan & Co. (A.Y. 2007-08) ITA No. 860/JP/2010 and CO No. 67/JP/2010.
2. M/s Padmawati Vs ITO (A.Y. 2007-08) ITA No. 809/JP/2011.
3. DCIT Vs. M/s Vision Jewellers (2007-08) ITA No. 1179/JP/2010.
4. DCIT Vs M/s Amrapali Jewels (P) Ltd. (A.Y. 2006-07) ITA No. 416/JP/2011.

The learned CIT D.R. further contends that though department could have resorted to the total disallowance of the amount of bogus purchases. However, the Assessing Officer have taken a conscious decision to apply the ratio of the decision in the case of Sanjay Oil Cake Industries 316 ITR 274 and Vijay Proteins Ltd. 58 ITD 428 and decision of the Hon'ble jurisdictional ITAT and disallowed only 25% of total bogus purchases. The learned CIT DR submitted that the G.P. ratio on the basis of past history is most crude and unscientific method for estimation of income as most these assesseees had tainted and painted past history. In other words these assesseees had been found indulging in such type of malpractice of procuring bogus bills in past also. The profit of these assesseees are doctored by fudging the records of purchase and closing stock to reduce the profits. He also contended that it is not necessary to expect a sequential growth in profits or consistency in profit earnings. As the gems and jewellery business has international linkage, fluctuation of profits are bound to be happened. A domestic market also gets affected by such changes happening outside the country and also socio economic political changes affect the probability of the trade of gems and jewellery. He assailed the lump sum additions confirmed in some of the cases by the higher courts as it is not based on any material on record. He contends

to apply most reasonable 25% disallowance of bogus purchases, which has been confirmed by the Hon'ble ITAT in the case of Vijay Proteins Ltd. Vs. JCIT (supra) wherein even 25% disallowance of purchases was held justified. In case of Trident Jewellers Vs. ITO ITA No. 552/JP/2013, disallowance of 25% net profit on purchases has held the estimate being honest and fair.

General written submissions of the A.Rs

6. At the outset, the learned A.Rs argued that in estimating the income after rejecting the books U/s 145(3) of the Act, the Assessing Officer does not possess any arbitrary authority to assess at any figure he likes. Although he is not bound by the strict judicial principles in making the estimate, it should be guided by rules of justice, equity and good conscience. He relied upon the decision in the case of CIT Vs. Laxmi Narayan Badridas 5 ITR 170, 180 (PC). It is argued that the learned AR supported 25% disallowance out of the unverifiable purchases on the basis of decision in the case of Sanjay Oil Cake Industries (supra) and Vijay Protein Ltd. (supra). Both these decisions have been considered and distinguished by the Hon'ble ITAT in the case of Gems Paradise in ITA No. 700/JP/2009 dated 18/12/2009 for A.Y. 2006-07 and held that in case of Sanjay Oil Cake Industries, a specific finding was given by the Assessing Officer that purchases were made from the alleged bogus suppliers

at higher rate as compared to the other parties. In the case of Vijay Proteins Ltd., after examining the bank account, it was established that cheques issued to various parties were deposited in one of the account, which were found to be owned by the assessee himself but there are no such circumstances in these cases.

6.1 The learned DR also referred the decision in the case of Nand Kishore Meghraj Jewellers in ITA No. 433/JP/2009 for A.Y. 2006-07 dated 09/09/2009 wherein disallowance at 25% was confirmed on the ground that the payments made against these purchases had come back to the assessee. The subsequent decision of Hon'ble ITAT Jaipur Bench in case of Trident Jewellers (supra) wherein disallowance of 25% on unverifiable purchases was confirmed by the SMC Bench without considering the numerous decision of Division Bench of ITAT where the estimation is made by application of G.P. rate considering the past history. It is further argued that 25% disallowance of the unverifiable purchases cannot be applicable as various business entities work under different environment and circumstances across the trade.

6.2 The learned AR submitted that G.P. rate should be applied by considering past history of the assessees for which he relied on the decision

of Hon'ble jurisdictional High Court in case of CIT Vs. Inani Marbles Pvt. Ltd. 316 ITR 125 wherein it has been held that preceding year results constitute a good basis for working out the gross profit, in case of Kansara Bearings Pvt. Ltd. Vs ACIT 270 ITR 235 (Raj. HC) lump sum trading addition has been confirmed by the ITAT. The Hon'ble Rajasthan High Court in the case of Shri Sindhuja Foods Pvt. Ltd. 16 DTR 278 has held that where the assessee's books of account are rejected as it has shown bogus purchases but gross sale figure is not disturbed and the CIT(A) and Tribunal applied G.P. rate of last year for making the best judgment assessment. It cannot be said that relevant material evidence has not been considered by the ITAT or any irrelevant consideration has been taken into account by the Tribunal in reducing the addition made by the Assessing Officer in this behalf. Thus, estimating the income based on the past history has the approval of the ITAT as well as higher courts.

6.3 In case of CIT Vs. Amrapali Jewellers Pvt. Ltd. 65 DTR 196 and CIT Vs. Precious Jewels Corporation 205 Taxman 22, wherein the Assessing Officer disallowed 20% of unverifiable purchases but such addition was reduced by the Hon'ble ITAT by applying G.P. rate considering the past history and on departmental appeal no substantial questions of law was found

by the Hon'ble Court. In following cases, the Hon'ble ITAT has consistently held that in cases of unverifiable purchases that the income should be estimated by applying G.P. rate considering the past history of the case.

- (i) DCIT vs. Gems Paradise ITA No. 700/JP/2009 dated 18/12/2009 for A.Y. 2006-07.
- (ii) ITO Vs. G.B. Impex ITA No. 1263/JP/2010 dated 11/02/2011 for A.Y. 2006-07.
- (iii) Shankar Exports Vs. ACIT 42 DTR 441 dated 01/6/2010.
- (iv) ITO Vs. Neeraj Lakhi ITA No. 822/JP/2010 dated 30/12/2010 for A.Y. 2006-07.
- (v) DCIT Vs. M/s Oriental Gemco Pvt. Ltd. ITA No. 1368 & 1369/JP/2010 dated 10/03/2011 for A.Y. 2006-07 and 2007-08.
- (vi) Jewells Emporium ITA No. 251/JP/2011 dated 16/09/2011 for A.Y. 2006-07.
- (vii) Praveen Nigotia ITA No. 1117/JP/2010 dated 29/04/2011 for A.Y. 2007-08.
- (viii) DCIT Vs. Sh. Jitendra Kumar Nigam ITA No. 881 & 838/JP/2011 dated 30/01/2014 for A.Y. 2008-09.

(ix) Smt. Usha Modi Vs. ACIT ITA No. 200/JP/2012 dated 30/01/2014
for A.Y. 2008-09.

He also opposed the arguments made by the learned D.R. that the past history is doctored as these parties were indulging in such type of unverifiable purchases in past also but the same were not supported with any evidence. These arguments made by the learned D.R. are contended to be theoretical in nature. It is submitted that in case, overall G.P. rate is better, no addition qua on unverifiable purchases would be called for but if it is found otherwise, the addition would be restricted by applying the differential G.P. rate with reference to sale of unverifiable purchases. It is further submitted that in some of the cases, unverifiable purchases also remain in closing stock with the assessee, therefore, no addition is called for. Thus, the learned AR argued that proper way is the G.P. rate may be applied considering the past history of the case after adjusting any peculiar facts if any case wise.

The list of unverifiable purchases as per Annuexure-A of this order attached. :

It will be appropriate to deal with facts of the individual case before us, which are as under:

7. Besides above the general observations made by the Assessing Officer and replied by the A.R., the specific facts of the cases held are as under:-

(1) **Shri Anuj Kumar Varshney (ITA No. 187/JP/2012 for A.Y. 2007-08)**

8. This is an appeal filed by the assessee against the order dated 23/12/2011 passed by the learned CIT(A)-II, Jaipur for A.T. 2007-08. The effective grounds of appeal are as under:-

- "(1) That the learned CIT(A) has erred in law and on facts in sustaining the application of provisions of section 145(3) of IT Act ignoring audited statements of accounts so also day to day stock register which were produced and examined by the learned A.O. during the course of hearing.*
- (2) That the learned CIT(A) was not justified in sustaining the addition of Rs. 2,90,832/- on account of disallowance of 25% of total purchases of Rs. 11,63,326/- from who different sellers, treated as bogus, the purchases of which are duly entered in stock register, the sales of which were accepted as genuine.*
- (3) That the learned CIT(A) has erred in sustaining disallowance of Rs. 32,421/- being 20% of day to day business expenses out of telephone expenses, vehicle fuel expenses, traveling expenses and office expenses."*

8.1 Grounds No. 1 and 2 of the assessee's appeal are interlinked, therefore, we decide both the issues as under:-

The assessee is in trading of the precious and semi precious stones. The assessee filed return on 20/10/2007 at Rs. 2,04,140/-. The assessee's on the total turnover of Rs. 52,94,174/- declared gross profit of Rs. 9,05,528/- G.P. @ 17.10%,. In immediate preceding year on sale of Rs. 39,85,826/- gross profit of Rs. 6,23,115/- and G.P. rate @ 15.63% is reported. The assessee produced stock register which on verification was found by the Assessing Officer that the stock register was maintained on the basis of only quantity of the gems/stones, no qualitative wise details were maintained. It has been observed that in the gems and jewellery trade, quality, shape of the stones and the purity of metal always have a great importance in valuation and cut has been undisputed by the assessee before the Assessing Officer that the value of closing stock was arrived at on purchased price or market price on estimated basis, whichever is lower. The Assessing Officer held that closing stock of assessee had been shown on estimate basis, which partly included cost mentioned in bogus bills also and as such no realistic verification could be possible. The assessee had shown purchases from 2 parties namely Roshan Gems at Rs. 7,88,026/- and Millennium Enterprises at Rs. 3,75,300/-. The learned Assessing Officer asked to produce these parties for verification vide letter dated 14/12/2009, which assessee failed to produce. Thereafter

independent inquiries were also conducted to find out existence of such vendor and the genuineness of the transactions. As discussed in various other cases of gems and jewellery, the investigation carried out in case of Sanjiv Prakashan Group, search seizure in case of Haldia Group and survey conducted by BCTT wing, it had been found that in jewellery market, there is a rampant practice to get accommodation bills of purchases of gems and stones to reduce the profitability. The learned Assessing Officer further observed that he deputed ward Inspector to verify the activity of both the parties, which also shows that there was no business activity carried out by both the parties. The Inspector's report was confronted and the learned Assessing Officer asked the assessee to produce these parties for verification vide show cause letter dated 14/12/2009. The assessee only filed reply vide letter dated 18/12/2009 and failed to produce these parties for verification. The assessee's reply had been reproduced by the Assessing Officer on pages 4 and 5 of the assessment order. The learned Assessing Officer after considering the assessee's reply and relying upon the decision in the case of Kanchwala Gems (supra) and Chuharmal Vs. CIT 172 ITR 250 (SC) and also the decision of the Hon'ble Rajasthan High Court in the case of Golcha Properties Pvt. Ltd. (supra) held that the primary onus is on the assessee to

prove that the purchases were genuine. The party is known to the assessee who failed to establish their existence and purchase and investigations conducted by the department goes against the assessee, therefore, he rejected the book result U/s 145(3) of the Act and after following the decision in the case of Sanjay Oil Cake Industries, Vijay Protein (Supra) and Kishore Meghraj Jewellers, he disallowed 25% of unverifiable purchases of Rs. 11,63,326/- and made addition of Rs. 2,90,832/- to the income of the assessee.

8.2 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who dismissed the assessee's appeal by observing that the assessee failed to establish such purchases, summons issued U/s 131 of the Act through ward Inspector remained uncomplied as due to non existence, they could not be served on the purchasers. The learned Assessing Officer rightly applied the decision of Sanjay Oil Cake Industries and Vijay Protein in case of the assessee. The department has conducted various enquiries through search and survey which lead to conclusion that in gems and jewellery market it is a rampant practice to provide and use the accommodation bills of purchases to reduce the profitability. The learned CIT(A) relied on the decisions in the case of Deepak

Dalela, Shanti Kumar Chordia and Kanchwala Gems (supra), Shri Sindhuja Foods Pvt. Ltd. (2008) 16 DTR 278 (Raj), Amar Mining Company (supra), ITO Vs. Sunsteel, 92 TTJ 1126 (Ahmadabad ITAT), Uniword Telecom Ltd. Vs. Addl. CIT 45 DTR 433 (Del. ITAT). It is held that the assessee had not maintained qualitative details of goods and had shown closing stock on estimate basis. The amount outstanding as on 31/3/2007 also exceeds the addition of Rs.2,90,832/- made by the Assessing Officer. Apropos such notorious facts, no credence can be given to pleas that the payments were made through account payee cheque as immediately amount has been withdrawn in cash from the bank account. Therefore, he confirmed the disallowance made by the Assessing Officer @ 25% on unverifiable purchases.

8.3 Now the assessee is in appeal before us.

8.4 The learned A.R. Shri G.M. Mehta for the assessee reiterated the facts mentioned before the lower authorities and it was claimed that the assessee has submitted the confirmation that payments were made through banking channel for both the parties. The turnover and G.P. rate achieved by the assessee in A.K. Gems and Jewellery compared to immediate preceding year is better. Therefore, the learned CIT(A) was not justified in confirming the

disallowance @ 25% by following the order in the case of Sanjay Oil Cake Industries (supra). The Hon'ble ITAT Jaipur Bench, Jaipur has considered the decision of Sanjay Oil Cake Industries, in cases of Gems Paradise and Suresh Chandra Nahata wherein it has been held that a reasonable and judicious addition should be estimated by considering the past history of G.P. of the case. Therefore, he prayed to delete the addition.

8.5 At the outset, the learned CIT DR supported the order of the learned CIT(A) and argued that the learned CIT(A) had given detailed findings on facts and legal proposition on this issue. He also confirmed the addition reasonable on the basis of overall surrounding circumstances of the case. The assessee could not produce these parties for verification. Notices were issued by the Assessing Officer, were neither got served by assessee nor were found on given addresses, therefore, disallowance of 25% on unverifiable purchases may please be confirmed.

8.6 We have heard the rival contentions of both the parties and perused the material available on the record. As discussed in above cases, the material available on record established that in Jaipur, a rampant practice is in vogue to get and issue accommodation bills of purchases to deflate the profit. The learned Assessing Officer made disallowance @ 25% of such bogus

purchases on the basis of decision in the case of Sanjay Oil Cake Industries and Vijay Protein Ltd. (supra). In our view the 25% disallowance appears to be higher side, therefore, keeping in view of the facts of the assessee's case as well as other cases as discussed above, we feel that 15% disallowance out of bogus purchases is reasonable on unverifiable purchases and will meet the ends of justice. The rejection of books of account is justified. The assessee gets relief partly.

8.7 The last ground of assessee's appeal is against disallowance of business expenses @ 20%. The learned Assessing Officer found that the assessee used telephone, mobile and vehicles for personal and non-business purposes. The expenses were not supported with proper vouchers and bills. Most of the expenses were incurred in cash in which self made vouchers have been maintained, therefore, genuineness of the expenses has not been proved by the assessee beyond doubt. Thus, he disallowed 20% expenses for possible leakage of the revenue. The learned CIT(A) confirmed the addition by relying various decisions wherein identical disallowance has been confirmed @ 20%.

8.8 The learned AR for the assessee argued that there is hardly any personal use of these facilities and disallowance made higher side by the learned Assessing Officer. It is difficult to get 100% vouchers of these

expenses from the market. Therefore, a reasonable disallowance may please be confirmed. At the outset, the D.R. supported the order of the learned CIT(A).

8.9 We have heard the rival contentions of both the parties and perused the material available on the record. There is no past history in this case that such disallowance was made by the Assessing Officer on estimation basis but it is a fact that these expenditures were incurred mostly in cash and it is difficult to collect the third party evidence in each and every item of expenses. Therefore, we confirm this disallowance @ 10%. The assessee gets relief partly on this ground.

8.10 In the result, the appeal of the assessee is partly allowed.

(2) **M/s Bhansali Trading Corporation (ITA No. 253/JP/2012 for A.Y. 2007-08)**

9. This appeal is filed by the Revenue against the order dated 22/12/2011 passed by the learned CIT(A)-III, Jaipur for A.Y. 2007-08. The sole ground of appeal is against reducing the trading addition of Rs. 69,71,080/- (Rs. 17,42,770/- in unit-1 and Rs. 51,93,406/- in Unit-II) to Rs. 5,00,000/-. The assessee firm engaged in the business of manufacturing, importer and exporter of precious and semi precious stones and studded diamond

jewellery. The assessee filed return of income for A.Y. 2007-08 on 31/10/2007 at Rs. 16,34,360/-, which was revised on 18/12/2008 by declaring returned income at NIL. The reasons for revising the return had been stated the computation of exemption U/s 10B of the Act @ 100% instead of 90% claimed in the original return. This case was scrutinized U/s 143 (3) of the Act. The learned Assessing Officer found that G.P. rate in Unit-I was 8.82% against 6.07% in immediate preceding year. Similarly, G.P. rate in Unit-2 was 19.24% as against 13.87% in immediate preceding year. The learned Assessing Officer found that closing stock declared by the assessee on the basis of average lot wise costing. The audit report showed that inventory of stocks was valued as certified by the partner of the firm. The mean value of the stock had been taken as certified by the management. He asked to give the quantitative as well as qualitative details of stock which could not be provided by the assessee before him. Closing stock is thus valued on estimate basis as pointed out by the auditor. The learned Assessing Officer concluded that closing stock cannot be verified in absence of required detail. He further found that the assessee has shown total purchase of Rs. 3,01,67,046/- in Unit-I, Rs. 7,19,50,253/- in Unit-2 during the year under consideration. The Assessing Officer gave the details of unit wise purchase on

page 3 of the assessment order. He further observed that all these above parties had been covered by BCTT Wing of the department U/s 133A of the Act, it was found that these parties were indulged in providing entries and not any genuine business transaction. M/s Gaurav Exports and S.P. jewellers are the party, which was being run by Ravi Haldia Group, which also was identified as an entry operator as a result of search and seizure operation conducted by the department. Summons U/s 131 of the Act were also issued to the above said parties at the address given by the assessee. Thus, summons issued were not complied and the summons issued to M/s S.P. Jewellers, M/s Gems Ocean, M/s Swapn Sh. Jewels were returned unserved. The postal remark that no such person or business existed on the addresses given. The assessee was asked to produce these parties for verification on 07/9/2009 and 14/9/2009 and on 2/12/2009. The Assessing Officer gave show cause notice in absence of non production of the parties for verification as to why these purchases of Rs. 69,71,080/- in Unit-I and Rs. 2,07,73,625/- in Unit-II should be treated as unverifiable purchases. The assessee replied on 10/12/2009, which had been reproduced by the Assessing Officer on page 4 of the assessment order. After considering the assessee's reply, the learned Assessing Officer concluded that these aforesaid parties had given only

accommodation bills and were not doing any actual sale and purchase of gems and jewellery, which has been also established by the investigation made by the department through survey/search operation carried out. These parties had categorically admitted in their respective statements recorded on oath that they were issuing bills only and no real trade was ever conducted by them. No physical delivery of goods was being given against these bills and after receiving the cheque of equal amount from the interested party, cash was remitted to them after making cash withdrawal from the bank account where cheques were deposited. These persons were charging commission @ .20% to .25% on quantity of bogus bills. In some cases, the commission was given as higher as .5% to .6%. These facts and evidences demonstrate that purchase bills, quantity, quality and rate was exclusively in the prowess of assessee's dictate. Accommodation operations were concerned with their commission on the gross amount. The assessee had, thus, failed to discharge its onus in this behalf. Consequently, the purchase expenditure claimed by assessee as per such accommodation/havala bills was not covered in any section provided in Part-D of Chapter IV from Sections 28 to 44DB of the Act to compute the business profit. The assessee could not establish the genuineness of the parties to whom the payments were made through

cheque. Therefore, purchases were found non-genuine and both results were unreliable. He further relied on following case laws:-

- (a) M/s Indian Woolen Carpet Factory Vs. ITAT (supra) for genuineness of the purchases,
- (b) CIT Vs. Precision Finance Pvt. Ltd. (supra) for payment made by account payee cheque is not sacrosanct.
- (c) CIT Vs. Golcha Prop. Pvt. Ltd. (supra) for genuineness of the transactions.
- (d) CIT Vs. La Medica (supra) for sellers found non existent, the purchase price was treated as income from undisclosed sources.
- (e) Beena Metals Vs. CIT 240 ITR 222 (Ker) for brokers through whom the purchases were made lead to conclusion of bogus purchases.
- (f) Chaturbhuj Panauj AIR 1969 (SC) 255.
- (g) Sumati Dayal (supra).
- (h) C. Vasant Lal & Co. 45 ITR 206 (SC)
- (i) M/s Kanchwala Gems Vs. JCIT (supra) for payment by account payee cheque is not sufficient to establish the genuineness of purchase.

After considering the facts and circumstances of the case, the learned Assessing Officer invoked the provisions of Section 145(3) of the Act and rejected the book result. After rejecting the book, the Assessing Officer can estimate the income U/s 144 of the Act. After considering the decision in the case of Sanjay Oil Cake Industries and Vijay Protein (supra), he estimated the income @ 25% on unverifiable purchases of Rs. 69,71,080/- in Unit-I and Rs.

2,07,73,625/- in Unit-II. Accordingly, he made the addition of Rs. 17,42,717/- in Unit-1 and Rs. 51,93,406/- in Unit-2. The learned Assessing Officer allowed the 10B deduction in Unit-2. However, the taxable income of Unit-1 was calculated at Rs. 22,51,840/-.

9.1 Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the learned CIT(A), who had partly confirmed the addition by observing that the assessee had submitted the confirmation for purchases made in both the units with PAN number and TIN number. He also filed complete list of purchases of both the units as per direction of the Assessing Officer. He also submitted before the learned CIT(A) that he was maintaining day to day stock register, production record and finished stock register of both the units. The assessee also filed complete stock chart for both the units showing opening stock, purchase, manufacturing, sales and closing stock alongwith audit to balance sheet. There was no change in the method of valuation of closing stock, the method was accepted in past. The assessee could not produce the parties before the Assessing Officer but his argument before the CIT(A) that Assessing Officer should have verified these parties through Inspector from the sales tax department, from the C.A., who audited the accounts, from the Assessing

Officer and concerned bank. The assessee had submitted the stock tallied showing quantity and quality wise with the income tax return and the assessee produced all the stock register before the Assessing Officer. The learned CIT(A) observed that the Hon'ble ITAT Jaipur Bench in the case of Suresh Chand Nahata XLV TW 164 (JP) and in the case of Rajendra Kumar Jain in ITA No. 573/JP/2010 order dated 13/1/2011 wherein the addition decided on the basis of past history of the case. The case laws cited by the learned Assessing Officer i.e. Sanjay Oil Cake Industries and Vijay Protein (supra) were not found applicable in these cases on the ground that in case of Sanjay Oil Cake, the Assessing Officer has established that alleged bogus suppliers at higher rate compared to other parties and in case of Vijay Protein, the Assessing Officer established that the purchases were inflated and there was a suppression of production and even raw material was not received. In case of Rajendra Kumar Jain, the Hon'ble ITAT has held that past history of the case is to be taken for deciding the G.P. rate which is best guide. The learned CIT(A) also relied the decision in the case of Gotan Lime Khanij Udoyog (256 ITR 243) and finally uphold the addition of Rs. 5 lacs in place of addition made at Rs. 69,36,176/-.

9.2 Now the Revenue is in appeal before us. The learned CIT DR vehemently supported the order of the learned Assessing Officer and argued that in both the units, the assessee could not produce the parties for verification even repeated notices were given to the parties. Evidence furnished by the party as claimed before the learned CIT(A) that the assessee had filed confirmation with PAN and other details and tried to shift the onus on the Assessing Officer. However, the Assessing Officer had issued the summons which were not responded, partly returned back unserved. The assessee was asked to produce these parties by the Assessing Officer for verification, which has not been produced before him. It is also not clear from the order of the Assessing Officer that the assessee had filed these details before the Assessing Officer, which has been claimed before the learned CIT(A). Even for sake of brevity, it can be assumed that these evidences were filed before the Assessing Officer even the primary onus is on the assessee. The learned CIT(A) also not segregated the addition made in Units 1 and 2 even the Assessing Officer allowed 100% exemption on enhanced income in Unit-2 only addition was made in Unit-1. Therefore, he prayed to confirm the order of the learned Assessing Officer by applying the decision in the case of Sanjay Oil Cake Industries and Vijay Protein Ltd. (supra). Later on the learned

CIT(A) passed order U/s 154 of the Act and apportioned disallowance in the ratio of 2:3 and accordingly be bifurcated addition of Rs. 5 lacs in Unit-1 at Rs. 2 lacs and in Unit-2, Rs. 3 lacs vide order dated 26/3/2012.

9.3 At the outset, the A.R. Shri H.M. Singhvi for the assessee submitted that he maintained complete books of account for both the units including manufacturing and stock register. All the sales, purchases and expenses are fully vouched and verifiable. There is no change in the method of accounting as compared to preceding year. The books of account are duly audited. The unit-2, which is EOU is controlled and supervised by the Central Excise and Custom authority. All the books of account and record of both the units were produced before the Assessing Officer. He further claimed that all the details of purchases were furnished before the Assessing Officer and maintained day to day stock register, production record and finished stock register of both the units. The assessee also filed complete stock chart for both the units showing opening stock, purchase, manufacturing, sales and closing stock alongwith audit balance sheet. The assessee had furnished confirmation for all the purchases with PAN and TIN number. The summons of these parties were issued and served except summons to S.P. Jewellers, M/s Green Ocean and M/s Swahana Sh Jewels were returned unserved. He

again reiterated the arguments, which was raised before the learned CIT(A) and submitted that in case laws relied on by the Assessing Officer i.e. Sanjay Oil Cake Industries and Vijay Protein (supra) are not squarely applicable in the case of the assessee as held by the ITAT in various cases. He further relied on the following case laws:-

- (a) Sagar Mal Daga & Co.
- (b) G.N. Gems XLII IW 10
- (c) M.K. Jain & Sons.
- (d) Vaibhav Gems Vs. Addl. CIT & ACIT Circle-5 Vs. Vaibhav Gems.
- (e) Subhash Chand Nahata XLVTW 164 (JP)
- (f) Sambhav Gems 36 TW 254
- (g) Ravi Kumar Rawat 134 TTJ 634 (JP)
- (h) Chordia gems XL TW 111 (JP)
- (i) Rajendra Kumar Jain (ITA No. 573/JP/2010) order dated 13/01/2011.
- (j) CIT Vs. Amrapali Jewels (P) Ltd. 65 DTR 196 (Raj)
- (k) CIT Vs. Nangalia Fabrics Private Limited dated of order 22/07/2013 (Guj.)

Therefore, he prayed to confirm the order of the learned CIT(A).

9.4 We have heard the rival contentions of both the parties and perused the material available on the record. The learned Assessing Officer found unverifiable purchases in Unit-1 at Rs. 69,71,080/- wherein 10 parties

were involved. The department had gathered the information through survey and search seizure in above parties and they categorically admitted that they have provided entries and not doing any purchase and sale of gems and jewellery. Even then Assessing Officer asked to produce these parties for verification which could not be produced by it. The Assessing Officer also issued summons U/s 131 of the Act, which was partly served and partly returned back unserved. The assessee's argument that case laws applied by the Assessing Officer i.e. Sanjay Oil Cake Industries and Vijay Protein are not squarely applicable, is not accepted as such because primary onus is on the assessee to produce these parties for verification before the Assessing Officer. In the assessment, the Assessing Officer has a right to estimate the profits on a reasonable basis, adopting the base provided by ITAT judgments cannot to be termed as unscientific, unreasonable or arbitrary. Filing of some confirmation with PAN and TIN number are not sufficient to prove the purchases are genuine as they are to be supported by other facts including delivery of goods, as held by the various courts. The appellant cannot directly or indirectly put blinkers on investigations of the Assessing Officer to compel him to do it as per sweet will of the assessee. It is not permissible that the assessee will direct the Assessing Officer to enquire his case at his own way,

which is not required by law. The assessee wanted to shift his onus on the Assessing Officer on flimsy ground. It is rampant practice in gems and jewellery business in Jaipur that the assessee has been getting accommodation bills to reduce the profitability which has been established by the department. The Hon'ble Rajasthan High Court recently in the case of Venus Arts & Gems Vs. ITO vide order dated 20/08/2014 has also confirmed the addition on unverifiable purchases @ 21.96% and also found order of the ITAT being purely a finding of fact by the two appellate authorities as to what should be a reasonable G.P. rate after rejection of books of account and various infirmities noticed by the lower authorities and in their view no question of law much less substantial question of law can be said to emerge out of the order of the Tribunal. The Hon'ble Court has further observed as under:

"that despite the assessee having been directed to produce the parties from whom the assessee purchased the goods for verification, but despite ample opportunities having been granted, the parties were not produced, particularly in view of the fact that the summons at the addresses given by the assessee himself either came back unserved and returned unserved by postal authorities or if served none of them presented before the A.O. It is the prime duty of an assessee to produce the sellers from whom he has purchased the goods in view of

the fact that notices came back unserved. Merely because the parties are assessed to income tax and the transactions being by account payee cheques will not prove the genuineness of the transactions in view of the fact that in case of sellers as observed by the A.O. some of the parties denied the sale and stated that they did not sell the goods and merely issued bills without effecting actual delivery. Once this fact has come on record that the notice could not be served for one or the other reasons and the parties did not turn up then in our considered view the onus and burden shifts on the assessee which has to be discharged appropriately by the assessee and we have noticed in this case that the assessee has not been able to lead any evidence in furtherance of filing of confirmatory letters or merely showing that the amounts are being paid by account payee cheques. If the assessee was able to file confirmatory letters from the sellers than the assessee was certainly aware of the whereabouts and ought to have taken further steps in producing the parties and proving the genuineness of the purchases made by it, in view of what we have observed hereinabove. We are also of the view that making exports of such goods purchased by the assessee is hardly of any consequence. Major deficiency has been noticed by the A.O. and in our view the Tribunal has rightly reached to the conclusion.

The Assessing Officer disallowed 25% of bogus purchases in Unit-1. However, looking at the entirety of facts, competition in trade, possibility of advantage, derived a lenient view as plead by lawyers by alternate please, deserves to be

considered while arriving at the estimate. We are of the conscious view that 15% disallowance out of unverifiable purchase is reasonable in keeping in view the facts and circumstances of the case for both the units on unverifiable purchases of Rs. 69,71,080/- in Unit-I and Rs. 2,07,73,625/- in Unit-II. Accordingly, the revenue's appeal is partly allowed.

(3) **Shri Deepak Dalela I.T.A. No. 13/JP/2010 A.Y. 2006-07**

10. This is an appeal filed by the assessee against the order dated 12/11/2009 passed by the learned CIT(A)-II, Jaipur for A.Y. 2006-07. The effective grounds of appeal are as under:

- "1. *That the learned CIT(A) has erred seriously on the facts in sustaining the action of the learned A.O. in treating the purchases of Rs. 38,81,984/- made by the appellant from 14 parties as unverifiable in nature.*
2. *That the learned CIT(A) has erred seriously on the facts in sustaining the rejection of books by invoking the provisions of section 145(3) by the learned A.O.*
3. *That the learned CIT(A) has erred seriously on the facts in sustaining the addition to the extent of Rs. 9,70,496/- on account of trading addition.*
4. *That the assessee craves leave to add, amend, alter, and delete any of the grounds of appeal before the hearing."*

10.1 Grounds No. 1 and 3 of the assessee's appeal are interlinked and it has been observed that in this case, assessment U/s 143(3) of the Act was concluded by the Assessing Officer on 31/12/2008 as against returned income of Rs. 3,86,500/- at Rs. 37,00,740, in which trading addition of Rs. 33,14,223/- was made. In appeal, the learned CIT(A) had reduced this addition from Rs. 17,38,813/- to Rs. 9,70,496/-. The assessee challenged the order of the learned CIT(A) before the ITAT, Jaipur Bench, Jaipur, which was decided by the Coordinate Bench on 16/7/2010 by observing as under:-

"7. We have also noticed that the assessee has failed to produce the quantitative details and stock register and the assessee was also not able to get the closing stock verified and hence the books of account have correctly been rejected. Considering the discussion as contained in earlier paras, we feel that the addition as confirmed by the learned CIT(A) is proper as the amounts were still payable to the trade creditors from whom purchases could not be established and such amount exceeds the addition confirmed by the learned CIT(A). Accordingly, we uphold the order of the learned CIT(A) and the appeal of the assessee is dismissed."

The assessee filed M.A. in this case. There was a difference of opinion between the Hon'ble Members, therefore, the assessee's M.A. was referred to

Hon'ble Third Member. The Hon'ble Third Member had allowed the assessee's M.A. and recalled the order of the ITAT Jaipur bench dated 16/7/2010. The assessee's case was refixed. The factum of the case is that the assessee is dealing in manufacturing, trading and exporter of gems and jewellery. The returned income declared at Rs. 3,86,500/- and exempted income Rs. 1,29,751/- had been filed on 31/10/2006. During the year under consideration, total turnover of Rs. 1,32,56,929/- giving G.P. rate of 11.88%, which was immediate preceding year, sale of Rs. 92,82,238/- and G.P. rate was 8.82%. The auditor had given following observations in the tax audit report in form No. 3CD against the column mentioned below.

- (i) Column No. 28(a):- The assessee's bills in large number of small items, therefore, it is very difficult to adduce the same here.
- (ii) Column No. 28(b):- No details were provided to us. However, the stock has been valued as per physical verification taken by the assessee at the end of the previous year. From the above observation, the Assessing Officer concluded that the assessee was not maintaining proper stock details. It has been also stated in the audit report that books of account of assessee include stock register maintained in computer system. Therefore, there is no difficulty in furnishing the

quantitative details of the stock in audit report, which was not also furnished during the course of assessment proceedings including stock register. The expenditure on account of job charges, wages, water and electricity expenses have been debited in the P&L account but there is no bifurcation of the items manufactured by the assessee and purchases made from market and then sold. It has been held that it was not possible to ascertain correctness of figures of the valuation of opening, closing stock, purchases and sales shown by the assessee. Non-production of quantity details even before the auditors at the time of audit shows that the expenses of non verifiable nature of method of maintenance of books of account and held that the assessee had not maintained any detail of stock. The assessee was asked to give details of basis of valuation of closing stock which has been shown in audit report at cost. The assessee failed to furnish this information. He further concluded that closing stock estimated and not subject to verification. The assessee had shown total purchases of Rs. 1,06,39,642/- during the year under consideration. The assessee had shown purchases from following parties at Rs. 38,81,984/-.

Sl. No.	Name of the parties from whom purchases made	Purchase amount
1.	Ruby Impex	2,36,004/-
2.	Sevorite Exports	5,42,907/-
3.	D.J. Impex (830711 + 201750)	2,34,414
4.	Rahul Exports	1,84,080/-
5.	Shree Laxmi Enterprises	4,70,642/-
6.	N.V. International	1,06,000/-
7.	Annu Enterprises	2,17,440/-
8.	S.P. Jewellersa	4,11,075/-
9.	G.R. Enterprises	2,55,063/-
10.	Bhawana Gems	1,52,680/-
11.	Muskan Gems	99,500/-
12.	Shri Ceations	3,34,220/-
13.	Nisha Exports	75,359/-
14.	Jaipur International	5,62,600/-
	Total	38,81,984/-

It is further observed that the department had conducted survey/search particularly in case of Haldia Group wherein during the course of search, certain incriminating documents relating to purchases of goods were found on confronting with the assessee Shri Ravi Haldia, admitted that to regularize the purchases made in cash, he had obtained bogus bills from different parties. He mentioned that payments made to all these parties were shown through cheques but immediately all amounts were received back in cash. The list of parties, during the course of search, who were engaged in supplying bills without actual delivery of goods, was submitted before the investigating authorities. The Assessing Officer verified from the list provided by Shri Ravi

Haldia, aforesaid 14 parties were listed in the list of accommodation bills/bogus bills providers. Thereafter he vide his ordersheet entry dated 07/8/2008 asked to produce all the above 14 parties from whom purchases valued at Rs. 38,81,984/- were made by the assessee to verify the genuineness of the purchases. After various adjournments sought by the assessee and filed reply before the Assessing Officer but none of the aforesaid parties were produced for verification. The contents of the letter as reproduced on pages No. 6 and 7. Thereafter, summons U/s 131 were issued on 08/12/2008 to above said parties but none of them were attended on 16/12/2008.

10.2 All the summons issued, which were sent through registered post had been received back unserved with different postal remarks like 'Not Known', 'No such person at the given address', 'No firm of this name' etc. These facts were put into the notice of the assessee and also proposed as to why book result should not be rejected U/s 145(3) of the Act. The learned A.R. for the assessee again filed reply before the Assessing Officer which has been reproduced on page Nos. 7 and 8 of the assessment order by which it has been claimed that the assessee made purchases from these parties regularly and goods either sold or lying in the stock. The parties were

registered with sales tax department having PAN and rate provided by them are as per market rate. The Assessing Officer further referred the BCTT Wing survey conducted by the department in 2007-08 on the parties, who indulged in the practices of issuing bogus bills in the trade of gems and jewellery. They categorically admitted in their respective statements recorded on oath that they were issuing bills only and no real trade was ever conducted by them. No physical delivery of goods were being given against these bills and after receiving the cheques of equal amount from interested party, cash was being remitted back to them after making cash withdrawals from the bank account where these cheques were deposited. These persons were charging commission as charged in other cases also. These 14 parties also were listed in the BCTT survey who had provided accommodation bills to the assessee also. He further observed that as per part-D of Chapter 4 of Income Tax Act, these purchases are not allowable from Sections 28 to 44DB of the Act. The assessee had knowledge about these parties and onus on him to prove that purchases were genuine and allowable U/s 37 of the IT Act. He further relied upon following case laws:-

- (a) M/s Indian Woolen Carpet Factory Vs. ITAT (supra) for genuineness of the purchases.

- (b) CIT Vs. Precision Finance Pvt. Ltd. (supra) for payment made by account payee cheque is not sacrosanct.
- (c) CIT Vs. Golcha Prop. Pvt. Ltd. (supra) for genuineness of the transactions.
- (d) CIT Vs. La Medica (supra) for sellers found nonexistent, the purchase price was treated as income from undisclosed sources.
- (e) Beena Metals Vs. CIT (supra) for brokers through whom the purchases were made lead to conclusion of bogus purchases.
- (f) Chaturbhuja Panauj(supra).
- (g) Sumati Dayal (supra).
- (h) C. Vasant Lal & Co. (supra).
- (i) M/s Kanchwala Gems Vs. JCIT (supra) for payment by account payee cheque is not sufficient to establish the genuineness of purchase.

The onus is on the assessee to prove the purchases are genuine, which was not discharged even after several opportunities provided by the Assessing Officer. Payments made through account payee cheque are not sacrosanct. The department also made effort to obtain the bank account and account opening form of these concerns wherein it was noticed that the operation of these accounts were by person of no means. They were not available at the addresses given in the bank record. They were not having any business establishment and all cash were immediately withdrawn from these accounts. The learned Assessing Officer finally concluded that the purchases made from

the aforesaid 14 parties at Rs. 38,81,984/- were not genuine. When books of accounts rejected U/s 145(3), the Assessing Officer to estimate to income U/s 144 of the Act reasonably on the basis of facts of each case. After considering the assessee's reply, he relied upon the order of the Hon'ble Gujarat High court in the case of Sanjay Oil Cake Industries (supra) and disallowed 25% on Rs. 38,81,984/- and made trading addition of Rs. 9,70,496/- in declared gross profit of the assessee. The assessee also relied upon the following case laws:-

- (i) Commissioner of Sales Tax Vs. H.M. Esufali, 90 ITR 271 (SC).
- (ii) M/s Kansara Bearing Pvt. Ltd. Vs. ACIT 270 ITR 235 (Raj.)
- (iii) CIT Vs. W. Hussain 171 ITR 405 (Patna).
- (iv) K.M. Mudaliyar Vs. CIT 61 ITR 644 (Madras)
- (v) CIT Vs. Rayala corporation P. Ltd. 215 ITR 883 (Madras).

He further observed that during the year under consideration, a gross profit of Rs. 15,75,419/- had been shown on total sales and he also observed that books of account rejected U/s 145(3) of the Act and also applied 25% of G.P. rate on Rs. 1,32,56,929/- as G.P. declared by the assessee at Rs. 11.88%. Thus, finally trading addition was made by the Assessing Officer at Rs. 33,14,232/- and no separate addition on account of unverifiable purchases were made in the income of the assessee as telescopic benefit was given to the assessee.

10.3 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had reiterated the findings given by the learned Assessing Officer on pages 11 to 13 of its order and confirmed the rejection of book U/s 145(3) of the Act. Thereafter he considered the various factors of business to estimate the income such as nature of business, turnover, past history, comparable cases and quantum of unverifiable purchases involved. The learned Assessing Officer undisputedly accepted the turnover at Rs. 1,32,56,929/- except unverifiable purchases of Rs. 38,81,984/-. There are no details available about the actual cost of those unverifiable purchases. He also found that the said purchases are relating to buying of different quantities of various items such as Ruby Cut Mix, Yellow Sapphire Mix, Garnet Mix Cut etc. and these items were shown in the purchased bills as well as in sales bills. The learned Assessing Officer has not doubted the sales made by the assessee. Therefore, these facts indicate that the assessee must have made the purchases of those items from some parties other than those 14 parties from whom purchases are shown in assessee's books of account. In these circumstances, the possibility of the assessee making those purchases in cash (thereby violating the provisions of Section 40A(3) of the Act wherein disallowance of 20% of

such expenditure is prescribed) and inflating the cost of purchases to some extent, could not be ruled out, in absence of actual details, such as quantity, quality, rate etc. of those purchases. Therefore, the learned CIT(A) held that the learned Assessing Officer was justified in disallowing 25% of the unverifiable purchases of Rs. 38,81,984/- on estimate basis, leading to an addition of Rs. 9,70,496/- but similar defects have not been pointed out by the Assessing Officer for remaining purchases of Rs. 1,06,39,642/- even no comparable case had been cited by the learned Assessing Officer before applying G.P. rate @ 25% on total sales. Thus, he restricted the addition at Rs. 9,70,496/- in place of total trading addition of Rs. 17,38,810/-. It is clarified that total addition made by the Assessing Officer was Rs. 33,14,223/- and resultant addition was mentioned at Rs. 17,38,813/-, this should be Rs. 23,43,736/-. The learned CIT(A) also taken same figures i.e. Rs. 17,38,813/- in place of actual figures of Rs. 23,43,736/-. We do not receive any rectification order made by the Assessing Officer as well as CIT(A) on this mistake. The learned CIT(A) allowed the appeal partly.

10.4 Now the assessee is in appeal before us. The learned A.R. Shri P.C. Parwal and the assessee Shri Deepak Dalela himself submitted that the assessee was maintaining day to day books of account, which is subject to

audit. These books are duly supported with bills and vouchers. The assessee had submitted the tax audit report alongwith the particulars in form No. 3CD. In Clause (9) of form No. 3CD, it had been stated by the Auditor that stock register is maintained. However, considering the large number of small items, in clause 28(a), it is mentioned that it is very difficult to give the quantitative details but it was stated that stock had been valued as per physical verification taken by the assessee at the end of the previous year. However, before the Assessing Officer, the list of opening stock inventory and closing stock inventory was furnished. For this, he drew our attention on page Nos. 105 and 106 of the paper book. The same was also produced before the Assessing Officer, which was not filed due to bulky. He also drawn our attention on page Nos. 8 and 9 of the paper book, which is only reply before the learned CIT(A) wherein it is also claimed that copy of letters and the inventory submitted to him are enclosed before the CIT(A) during the appellate proceedings. Therefore, it has been argued that complete quantitative details are available and the list of opening and closing stock is furnished, the rejection of books of account U/s 145(3) of the Act is not justified. For unverifiable purchases in case of 14 parties, the complete details of these parties were submitted during the course of assessment proceedings.

He drawn our attention on page Nos. 17 to 68 of the paper book and claimed that burden of proof in case of unverifiable purchases is not the same as burden of proof required U/s 68 of the Act. There is no law requiring the assessee to produce the parties from whom it had made purchases. If these parties are not appearing before the Assessing Officer in response to summons U/s 131, the Assessing Officer has other power under the Act to enforce the attendance. Why the department has not imposed the penalty on them. All these parties are assessed to tax at Jaipur and therefore, how the assessment had been completed on alleged non-existing persons. All these facts show that shelter has been given on the alleged parties. This proves that all the purchases made by the assessee were genuine. During the course of survey/search, these parties were found on given addresses, therefore, observation of the Assessing Officer that no concern was traced at the given address is without basis. Statement of various persons relied by the Assessing Officer in assessment order, cannot be a basis for holding that the purchases made by the assessee are non-genuine. Since in those statements, no question has been asked with reference to assessee. The parties providing the bills as per the statement cannot be universally applied in all other cases. Once the Assessing Officer relied on the statements, it is his duty to provide

opportunity of cross examination to the assessee. It is not the case of the department that the purchases rate/quantity of various items purchased from alleged unverifiable parties on different dates was less than the rate on which it was purchased on the date from other parties. The learned CIT(A) has accepted that the purchases of goods as per the bills raised by these 14 parties has been made by the assessee but he presumed that purchases has not been made from these parties but from some other parties to whom payments might have been made in cash. This is only a presumption of CIT(A). The learned CIT(A)'s finding is without any basis. The Hon'ble ITAT has taken a consistent view that where purchases are unverifiable, books of account are to be rejected but the addition cannot be made by disallowance of 25% of purchases rather appropriate G.P. rate is to be applied considering the past history of the case and other surrounding circumstances. He also gave the G.P. rate for A.Y. 2004-05, 2005-06 and 2006-07 in his submissions. It is argued that during the year under consideration, the G.P. rate was 11.88%, which is better from immediate preceding year i.e. 8.82% and comparable to G.P. rate @ 12.13% in A.Y. 2004-05. He further relied upon the decision in the case of CIT Vs. Inani Marbles Pvt. Ltd. (supra) wherein it has been held that proper rate declared and accepted in preceding year

constitute a good basis for working out gross profit. He further distinguished case law relied by the Assessing Officer i.e. Kanchwala Gems (Supra), CIT Vs. Golcha Properties (Pvt.) Ltd. (supra), VISP (P) Ltd. vs. CIT & Anr. 265 ITR 202 (MP) (HC), Indian Woolen Carpet Factory Vs. ITAT & Ors. (supra), M/s Sanjay Oil Cake Industries Vs. CIT (supra). He also relied on the following case laws.

- (i) CIT Vs. Shri Sindhuja Foods (P) Ltd. (supra)
- (ii) CIT Vs. Amarpali Jewels (P) Ltd. (supra)
- (iii) CIT Vs. Precious Jewels Corporation (supra).
- (iv) Diagnostics Vs. CIT & Anr. 56 DTR 317 (Cal) (HC).
- (v) Shankar Export Vs. ACIT 42 DTR 441 (Jpr) (2010).
- (vi) Malani Ramjivan Jagannath Vs. ACIT 207 CTR 19 (Raj).
- (vii) CIT Vs. Gotan Lime Khaniz Udyog (supra).
- (viii) CIT Vs. Leader Valves P Ltd. 285 ITR 0435 (P&H) (2006).

Thus, he prayed to delete the addition confirmed by the learned CIT(A).

10.5 At the outset, the learned CIT D.R. reiterated the arguments made in introductory paragraphs of this order and submitted that as per audit report, the auditor had not given details of stock, which will also not submitted before the Assessing Officer as claimed by the assessee before the Hon'ble Bench. There is no evidence with the assessee that he was maintaining opening and closing stock of the jewellery. He further argued that now closing and opening entry referred in page Nos. 105 and 106 of the

paper book is not bulky as claimed by the assessee at the time of assessment. Hardly, 16 items were shown in the opening stock and 21 items in closing stock, which was shown in both the entries on the basis of quantitative not qualitative as required by the Assessing Officer. Further the learned CIT(A) also referred about the closing stock but no specific findings given by the learned CIT(A) in the appellate order. The department has conducted enquiry through survey/search as mentioned earlier in other cases also. These parties also provided accommodation bills to the assessee, which were not found genuine by the lower authorities. Therefore, order of the learned Assessing Officer may please be confirmed.

10.6 We have heard the rival contentions of both the parties and perused the material available on the record. The assessee has not pressed ground of rejection of books of account U/s 145(3) of the Act. The learned A.R. not submitted any evidence that he has closing stock with him after physical verification made on the end of the previous year on repeated demand by the Assessing Officer, it has not been submitted before him. Now he has provided entry of opening and closing stock in quantitative not qualitative where hardly 21 items had been shown whereas he has claimed before the Assessing Officer that it is very bulky that the reason assessee has

not submitted closing stock before the Assessing Officer. The learned Assessing Officer applied 25% N.P. disallowance on unverifiable purchases on the basis of decision in the case of Sanjay Oil Cake Industries (supra) and Vijay Proteins (supra). However, the learned A.R. had argued to apply past history of the case but we find that past history of the assessee is also doctored, therefore, the same cannot be applied. We are of the considered view that 15% N.P. rate is reasonable on unverifiable purchases. This view also got support from the recent decision of Hon'ble Rajasthan High Court in the case of Venus Arts & Gems order dated 20/8/2014 wherein G.P. addition was confirmed by the ITAT, had found factual and not question of law involved in it. It is immaterial whether the assessee is 100% exporter. The Assessing Officer cannot be precluded from enquiring into the genuineness of the unverifiable purchases. Whereabouts of the parties from whom the purchases were made are known to the assessee. He should have produced these parties before the Assessing Officer for verification. Therefore, we have considered view that 15% N.P. on unverifiable purchases is reasonable in this case. Accordingly, the assessee's appeal is partly allowed.

10.7 In the result the assessee's appeal is partly allowed.

(4) G.B. Impex I.T.A. No. 241/JP/2012 A.Y. 2007-08

11. This is an assessee's appeal against the order dated 12/12/2011 passed by the learned CIT(A)-II, Jaipur for A.Y. 2008-09. The effective grounds of appeal are as under:-

"1. The learned CIT(A) has erred on facts and in law in confirming the action of the A.O. in disallowing 25% of the alleged unverifiable purchases of Rs. 3,28,40,664/- from four parties resulting into addition of Rs. 82,10,166/-.

1.1 The learned CIT(A) has erred on facts and in law in confirming the said disallowance ignoring the consistent view of the Hon'ble ITAT Jaipur Bench in applying a reasonable G.P. rate considering past history, where purchases are held unverifiable.

1.2 The learned CIT(A) has erred on facts and in law in relying on various case laws which are distinguishable on facts.

2. The assessee craves to amend, alter and modify any of the grounds of appeal.

3. The appropriate cost be awarded to the assessee."

11.1 All the three grounds of assessee's appeal are against confirming the action of the Assessing Officer in disallowing 25% of alleged unverifiable purchases of Rs. 3,28,40,664/- from four parties resulting into addition of Rs. 82,10,116/-. The learned Assessing Officer observed that the assessee is engaged in trading and export of precious and semi precious stones. The

assessee filed return declaring income at Rs. 4,84,159/- on 29/9/2008. The case was scrutinized U/s 143(3) of the Act. During the year under consideration on total turnover of Rs. 19,71,89,378/- G.P. has been declared at Rs. 1,06,85,782/- giving a G.P. rate of 5.42%. During the year, the assessee made purchases from following four parties at Rs. 3,28,40,664/-, the names of the same is as under:

Sl. No.	Name of the parties from whom purchases were made	Amount
1.	M/s Anupam Export & Imports, Jaipur	1,09,95,838/-
2.	M/s K.S. Exports, Jaipur	1,40,40,789/-
3.	M/s Rishab International, Jaipur	56,48,237/-
4.	M/s Royal Gems & Arts, Jaipur	21,55,800/-
	Total	3,28,40,664/-

During the course of search/survey operation conducted by the department, the aforesaid four parties had admitted their indulgence in providing accommodation bills to interested party charging some nominal commission on bill amount without actual delivery of goods. Therefore, the Assessing Officer vide his ordersheet entry dated 08/11/2010 was asked to produce all four parties personally for verification alongwith books of account including purchases bills but none of them were produced for verification before the Assessing Officer. The learned AR before the Assessing Officer had expressed his inability to produce these persons personally for verification as the parties

were not ready to attend the office on the request of the assessee. Accordingly, summons U/s 131 of the Act were issued to aforesaid four parties to verify the genuineness of the purchases but these summons were returned back with the remark that "no entity exist on the given address". These Facts were put in the knowledge of the AR of the assessee and asked to produce these parties for cross examination but the A.R. of the assessee filed only confirmation of accounts of these parties. Accordingly, the learned Assessing Officer gave show cause notice as to why on the basis of unverifiable purchases, their books of account should not be rejected U/s 145(3) of the Act and also why not 25% disallowance should be made on these unverifiable purchases. It has been submitted before the Assessing Officer that the assessee already submitted copy of purchase bills of all the parties containing complete address, telephone number, RST/CST number and PAN and payments to these parties were made through account payee cheques. The goods so purchased by the assessee had been exported. He also asked that onus to prove the purchase genuine is different than onus required to prove the cash credit U/s 68 of the Act. Accordingly, the assessee claimed that he discharged his onus to prove these purchases as genuine. The assessee further asked to provide material available with the department

against the assessee so that reply can be filed on it. The goods purchased from these parties were exported, which were under strict control of the custom department and Reserve Bank of India, therefore, purchases cannot be considered as bogus. After considering the assessee's reply, the learned Assessing Officer held that the purchases made from four parties were bogus. He further relied on the decision in the case of CIT Vs. Precision Finance Pvt. Ltd. (supra) for payment made by account payee cheque is not sacrosanct, Chuhar Mal Vs. Cit (supra) for Evidence Act application, M/s Kanchwala Gems Vs. JCIT (supra) for payment by account payee cheque is not sufficient to establish the genuineness of purchase, M/s Indian Woolen Carpet Factory Vs. ITAT & Ors. (Raj) (supra) and decision of Hon'ble M.P. High Court in the VISP (P) Ltd. Vs. CIT & Anr. (supra) for genuineness of the purchases, CIT Vs. Golcha Prop. Pvt. Ltd. (supra) for genuineness of the transactions, CIT Vs. La Medica (supra) for sellers found nonexistent, the purchase price was treated as income from undisclosed sources, Gurumukh Singh Vs. CIT 12 ITR 393 (FB) (Lahore) for rejection of books of account, CIT Vs. British Paints Indian Ltd. 188 ITR 44 (SC) for rule of estoppels. When various deficiencies has been pointed out by the Assessing Officer, he rejected the book result U/s 145(3) of the Act and estimated the income U/s 144 of the Act by relying

upon the decision of Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench decision in the case of Vijay Proteins @ 25% on unverifiable purchases of Rs. 3,28,40,664/- at Rs. 82,10,166/-.

11.2 Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the learned CIT(A), who had confirmed the addition by observing that investigation wing of the department had conducted survey on the various entry providers and all the above mentioned supplies were found to be such entries, which were providing accommodation bills without any actual business and physical delivery of goods. After receipt of the cheque, equivalent cash was given back after deducting commission varying between .20% to .25%. The Assessing Officer also issued summons U/s 131 of the Act to the alleged suppliers but these were returned back unserved by the postal department with remarks that "no such party exists at the given address". The Assessing Officer also directed the assessee to produce these parties, but the assessee expressed its inability to produce them. He further relied on the decision of Hon'ble ITAT Jaipur Bench in the case of Deepak Dalela where the Hon'ble Bench had confirmed the addition made by the Assessing Officer. After considering the ITAT Jaipur Bench's

decision in the case of Shanti Kumar Chordia Vs. ACIT (2010) 128 TTJ (JP) 708, which has been recalled by the Hon'ble ITAT. The learned CIT again relied upon the case laws referred by the Assessing Officer particular decision in the case of Kanchwala Gems where Hon'ble ITAT had confirmed the G.P. rate of 30% whereas the Assessing Officer applied 40% G.P. rate. He further relied on the decision in the case of CIT Vs. Sindhuja Foods (P) Ltd. (supra), ACIT Vs. Amar Mining Co. (supra), Mittal Belting and Machinery Stores Vs. CIT (253 ITR 341), Balaji textiles Industries Pvt. Ltd. Vs. ITO 49 ITD 177 (Mum Trib), ITO Vs. Sunsteel (92 TTJ 1126) (A.bad Trib), Uniword Telecom Ltd. Vs. Addl.CIT (45 DTR 433) and confirmed the addition of Rs.82,10,166/-.

11.3 Now the assessee is in appeal before us. The learned A.R. Shri P.C. Parwal for the assessee submitted that the assessee is engaged in the business of trading and export of Gem stones, Diamond, Rough etc. and had maintained day to day books of account, which is subject to audit. These books are duly supported with bills and vouchers. All the transactions of purchases and sales is fully verifiable from the supporting bills, vouchers and documents maintained by assessee. Export sales are also subject to control of custom authorities and Reserve Bank of India. All the exports of the assessee through banking channel and realization of exports proceeds is also through

banking channel. The assessee has submitted the tax audit report alongwith the complete quantitative/qualitative details of closing stock of raw material and finished goods. All the purchases and sales are duly recorded in the stock register. The Assessing Officer has accepted the sales, there cannot be sale without purchase. The Assessing Officer has also accepted the stock register/quantitative details. In these circumstances, even if some of the purchases as per the Assessing Officer are unverifiable, there cannot be a disallowance of 25% of such purchases. For unverifiable purchases from the concerned parties of this case, the complete details i.e. their address, PAN, Sales tax registration No., confirmation, copy of purchase bills, mode of payment of these parties were submitted during the course of assessment proceedings. The Hon'ble ITAT has taken a consistent view in number of cases where purchases are unverifiable, books of accounts are to be rejected but addition cannot be made by disallowing 25% of the purchases, rather appropriate G.P. rate is to be applied considering the past history of the case and other surrounding circumstances. Reliance is placed on the following case laws:

- (i) DCIT Vs. Gems Paradise ITA 700/JP/2009 dated 18/12/2009
- (ii) ITO Vs. Neeraj Lakhi ITA No. 22/JP/2010 dated 12/01/2011

(iii) ACIT Vs. M/s KLF Enterprises Pvt. Ltd. ITA No. 421/JP/2010 dated 10/12/2010.

(iv) ACIT Vs. M/s Jaipur Gem Crafts ITA No. 804/JP/2009 dated 21/09/2010.

(v) ACIT Vs. Royal India Jewellery ITA No. 424/JP/2010 dated 24/09/2010.

The learned A.R. further argued that the Hon'ble ITAT has not confirmed 25% disallowance in above following cases on the basis of unverifiable purchases but confirmed on the basis of past history of the case. It is further submitted that similar additions were made in A.Y. 2006-07 where also disallowance @ 25% was made but the Hon'ble ITAT had reduced this addition at 9.5% on declared turnover of Rs. 64,57,290/- as G.P. rate @ 8.54% declared by the assessee. That was the first year of the assessee. In the present case, the G.P. rate is 5.42% on turnover of Rs. 19,71,89,378/-, which is better than the G.P. @ 4.38% on turnover of Rs. 17,40,37,587/- in the immediate preceding year. He further distinguished case law relied by the Assessing Officer i.e. decisions in the cases of Shanti Kumar Chordia, Uniword Telecom Ltd. Vs. Addl. CIT, Kanchwala Gems (supra), Shri Sindhuja Foods Pvt. Ltd. (supra). He also placed reliance on the following case laws:

- (i) CIT Vs. Amarpali Jewels (P) Ltd. (supra)
- (ii) CIT Vs. Precious Jewels Corporation (supra).
- (iii) Diagnostics Vs. CIT & Anr. 56 DTR 317 (Cal) (HC).
- (iv) Shankar Export Vs. ACIT (supra)
- (v) CIT Vs. Leader Valves P Ltd. (supra).

Therefore, he prayed to delete the addition confirmed by the learned CIT(A).

11.4 The learned CIT D.R. reiterated the arguments made in introductory para of this case and submitted that the facts of this case also identical with other cases of unverifiable purchases as during the course of search and survey operation conducted by the department on various parties, which has been referred by the Assessing Officer in the assessment order that these parties had provided only bills, no delivery of goods were made. The Assessing Officer had given sufficient opportunities to the assessee to produce these parties for verification, which has not been produced by the assessee. He only filed confirmation, PAN and TIN number, which cannot be verified in absence of suppliers. The learned Assessing Officer reasonably disallowed on account of unverifiable purchases by following the Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench decision in the case of Vijay Proteins (supra), therefore, he prayed to confirm the order passed by the CIT(A).

11.5 We have heard the rival contentions of both the parties and perused the material available on the record. The assessee has not challenged the rejection of book result as defects pointed out by the Assessing Officer are sufficient to reject the book result U/s 145(3) of the Act. The department had conducted survey and search in various cases as mentioned by the Assessing Officer as well as the learned CIT(A). On investigation, it is found that four parties were also indulged in providing accommodation bills. The sufficient opportunities have been given by the Assessing Officer to prove the genuineness of the purchases. The Assessing Officer himself issued the notices to these parties but notices were returned back by the Postal Department with remark " no such party exists at given address". The assessee could not produce these parties for verification during the course of assessment proceedings. Even the Assessing Officer provided sufficient time to the assessee. The unverifiable purchases were Rs. 3,28,40,664/- whereas the assessee exported the goods during the year at Rs.93,42,720/- during the year under consideration. Therefore, the assessee's claim that all the goods were exported during the year is not correct. Further the learned Assessing Officer had not precluded by the law if the assessee even exported the goods 100% to investigate the unverifiable purchases. The

learned Assessing Officer sent notices to these parties which were returned back unserved with remark "party is not existent". The assessee was also produced these parties for verification whatever evidence were produced by the assessee are not sufficient to prove the purchase genuine even payments through account payee cheques is not sacrosanct and had not discharged onus on it. During the course of investigation conducted by the department, these parties were figured in the list of entry provides and they had admitted that they only provided bills no any real business with delivery of goods. The learned Assessing Officer applied Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench decision in the case of Vijay Proteins wherein 25% disallowance held reasonable on unverifiable purchases. The A.R. of the assessee tried to distinguish this case with facts and circumstances and argued to apply past history of the case. The onus is on the assessee to prove these purchases as genuine and sufficient purchases from these parties have been claimed to be made by him. The assessee also could not be able to lead any evidence in furtherance of filing of confirmatory letter or merely showing that the payments were made by account payee cheques. The assessee was aware of the whereabouts of the parties and he should have produced these parties

before the Assessing Officer for verification of purchases, which could not be done at the stage of assessment proceedings. The addition on account of unverifiable purchases were made in A.Y. 2006-07. Thus, past history of the assessee is not reliable and doctored. This finding is also got support from the recent decision of Hon'ble Rajasthan High Court in the case of Venus Arts & Gems order dated 20/8/2014 wherein it has been held that order passed by the ITAT for confirming G.P. after rejection of books of accounts on the basis of various discrepancies found by the Assessing Officer, there is no question of law involved in such profit estimates. Even the assessee may be 100% exporter which does not preclude the Assessing Officer from enquiring into the genuineness of the purchases. Therefore, we are of the considered view that 15% N.P. on unverifiable purchases is reasonable in this case. Accordingly, the assessee's appeal is partly allowed.

11.6 In the result, the assessee's appeal is partly allowed.

(5) **M/s Jewels Emporium (ITA No. 1014/JP/2011 and ITA No. 1034/JP/2011 for A.Y. 2008-09**

12. The ITA No. 1014/JP/2011 filed by the assessee as well as cross appeal No. 1034/JP/2011 by the Revenue are against the order dated 01/09/2011 of the learned C.I.T.(A)-I, Jaipur for the A.Y. 2008-09.

12.1 First we will deal with the assessee's appeal, is against disallowing a sum of Rs. 12,28,112/- U/s 40(a)(ia) of the Act. The assessee is engaged in the business of manufacturing and trading of precious and semi precious gems stones, gold/silver jewellery, silver ornaments/articles and handicrafts. He has a show room wherein different customers mainly foreign customers visit and purchased precious and semi precious jewellery. These customers make the payment to the assessee by different credit cards like Master card, Visa Card, Diners Card, Americian Express Card etc.. For this purpose, they install an electronic capture terminal at the premises of the assessee where the card is swapped alongwith amount of deal. The electronic data capturing machine picks the data which is provided in electronic magnetic chip fixed at the back of the credit card and then tally with the basic data provided at the main Visa/Master/Amex/JCB/Diners/Mestro Bank. In case, it tallies in total, it generates "Approval Code" if it does not tally at any step, it declines the transaction. At the end of the day, batch total of all the transactions on the specific card swap machine is taken out. This alongwith signed credit slip is sent to bank for collection. The bank after deducting certain amount named as service fees/discount/merchant discount rate/commission makes the payment to the assessee. During the year the amount commission retained by

different banks in respect of credit card slips sent to the banks for collection was as under:-

Name of the bank	Amount
American Express Bank	10,32,045/-
Citi Bank	2,33,554.18
Bank of Baroda	10,45,320.98
Standard & Chartered Bank	1,82,791.08
Total	24,93,717.24

The Assessing Officer further observed that the nature of payment is commission and liable to be deducted TDS U/s 40(a)(ia) of the Act. He gave reasonable opportunity of being heard to the assessee, which was replied by it vide letter dated 29/11/2010, which has been reproduced by the Assessing Officer on pages 11 and 12 of the assessment order. The appellant submitted that the relation between the assessee and bank is on principal to principal basis. The banks are not acting as agent of the assessee. Therefore, it was argued before the Assessing Officer that Section 194H of the Act is not attracted on such discount. After considering the assessee's reply, the learned Assessing Officer has described full procedure of credit card on page 14 and also explained the nature of payment on pages 15,16 and 17. It has been held by the learned Assessing Officer that the commission payment made by

the assessee to the bank are covered U/s 194H and 40(a)(ia) of the Act. He further relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Singapore Airlines Ltd. & Other Airlines, 213 Taxation 441 wherein commission retained by the travel agent on sale of tickets has been held liable to deduct TDS U/s 194H of the Act. He further relied in the case of Canara bank Vs. ITO, the ITAT Ahmedabad Bench 305 ITR (AT) 189 wherein MICR charges paid by the Canara Bank to SBI are liable for TDS U/s 194J of the Act. In case of Ultra Entertainment Solutions Ltd. Vs. ITO reported in 17 SOT 249 wherein term technical service had been interpreted in a widest possible manner for TDS provision. Thus, the learned Assessing Officer disallowed the payment of Rs. 24,93,717/- U/s 40(a)(ia) of the Act.

12.2 Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the learned CIT(A), who had confirmed the addition by observing that payment under consideration through credit card is not service charges but commission payment. Dealing of the assessee with the banks providing them machine is not on a principal to principal basis. The bank has been acting as an agent to the assessee and payment made to it are clearly covered under explanation of 194H of the Act. From the agreement entered by the assessee with ICICI bank, which clearly established

that the assessee made commission payment to it. Further even the agreement of the assessee with HSBC state that merchant will be paid within the time frame set out on the merchant application for the gross amount of the card transactions submitted less the amount of any discount, fees and other charges. The learned CIT(A) finally held that these payments are nothing but commission as defined in Section 194H. The learned CIT(A) further referred CBDT circular No. 65 dated 02/09/1971 on Hundi discounted by the bank and such discount cannot be termed as interest and therefore no TDS is liable to be deducted. She further relied upon the decision of Hon'ble Kerela High Court in the case of Vodafone Essar Cellular Ltd. Vs. ACIT (2010) 235 CTR (Ker) 393 wherein TDS is liable on commission or discount paid to distributor of SIM cards and recharge coupons U/s 194H of the Act. She further relied in the case of CIT Vs. Idea Cellular Ltd. (2010) 230 CTR (Del.) 43 wherein issue was distribution commission paid to distributors is liable to deduction for TDS. Further she relied on the case of CIT Vs. Singapore Airlines Ltd. & Ors. (supra). The assessee case laws i.e. CIT Vs. Cargil Global Trading P. Ltd. (2011) 335 ITR 94 (Delhi) and ABD International Inc. (2011) 55 DTR (AAR) 393 are not found squarely applicable in assessee's case. Finally she held as under:-

1. Full legal and equitable title on the payment to be received against sales made by the assessee remains with him and at no stage passes to the bank.
2. The bank i.e. the agent cannot give any discount or alter in any way the nature of transaction or the sale price decided by the seller i.e. the assessee.
3. The bank is allowed to collect the payments only after authorization by the assessee on submission of the valid sales drafts to it.
4. If the cardholder disputes any card transactions or the payments are not made then the disputed amount of such card transactions are to be charged back from the merchant accounts or its reserve accounts maintained in the bank.
5. The bank provides the information of collection of the card transaction amounts on a regular basis to the merchant. All penalties, damages on the sale are to be borne by the merchant or principal.
6. The bank charges commission/fee for services rendered as described in the agreement/contract between the merchant i.e.

the principal and bank i.e. the agent and finally confirmed the addition.

12.3 Now the assessee is in appeal before us.

12.4 The learned A.R. Shri Rajiv Sogani for the assessee submitted that Section 194H of the Act is not applicable on the assessee. The bank making the payment to the assessee firm does act on behalf of it. The bank works independently for which it retained certain fees/charges for the services rendered by it to the assessee firm for converting the credit card into functional currency. Thus, it can be concluded that charges retained by the bank are not payment for commission or brokerage by the assessee firm. The Hon'ble Jaipur ITAT Bench has been consistently taking the view in favour of the assessee that the said transaction does not fall under the purview of Section 194H of the Act as a result there is no requirement of deducting tax at source on such transaction. For which, he relied on the following case laws:-

- (i) P.R. Gems Vs. ITO ITA No. 514/JP/2011
- (ii) Ravi Kumar Rawat Vs. Addl. CIT, ITA No. 511/JP/2011.
- (iii) M/s Amprapali Jewells, ITA No. 416/JP/2011.

He further drawn our attention on the decision of Hon'ble ITAT Jaipur Bench, Jaipur in the case of Gems Paradise Vs. ACIT (Supra) wherein it has been held that Section 194H is applicable where any commission has been paid by the principal to the commission agent. The assessee sold its goods through credit cards and on presentation of bills, issued against the credit card, the bank makes payment to the assessee after deducting agreed fees as per terms and conditions in case of credit card. This is not a commission payment but a fees deducted by the bank. In this situation, the bank is principal, the bank is not advised to sell the goods to the customer and getting the commission on this sale. Therefore, Section 194H is not applicable in case of goods sold through the credit cards. He further relied in case of (i) DCIT Vs. M/s Vah Magna retain (P) Ltd. ITA No. 905 /Hyd/2011 and (ii) ITO Vs. Jet Airways (2013) 28 ITR (Trib) 582 (Mumbai). Therefore, he prayed to delete the addition.

12.5 At the outset, the learned CIT DR supported the order of the learned CIT(A).

12.6 We have heard the rival contentions of both the parties and perused the material available on the record. The assessee is selling the goods through credit cards which is swapped in the machine provided by the

bank, thereafter it is cleared after verification of the data of the credit card by the bank, who provided the card after charging of certain fees for making payment to the assessee. It goes directly in the account of the assessee's bank after reducing the charges. Therefore, there is no control on mechanical transfer of money from one account to another account. The assessee knows that he would receive less amount to that extent. The Coordinate Bench in case of Gems paradise (supra) had analysed and held the Section 194H and payment through credit cards as under:-

Section 194H is applicable where any commission has been paid by the Principal to the commission agent. This is not a case of commission agent as assessee sold its goods through credit card and on presentation of bill issued against credit card, the bank makes payment to the assessee after deducting agreed fees as per terms and conditions in case of credit card. This is not a commission payment but a fees deducted by the bank. If there is an agreement, that is agreement between the credit cardholder and the bank. Bank is a Principal and to spread over its business, a scheme is floated by bank i.e. issuance of credit cards. Bank issues credit card to the various customers who purchase the various credit cards on the agreed terms and conditions. One of the major condition is that if credit card holder does not make payment within the prescribed time limit then they charge 2% penal amount of bill which is raised by the shop keeper against sale of its items through credit card. Bank cannot refuse the

payment to the shop keeper who sale their goods through credit card. Only in those cases where goods are found damaged and credit card holder inform the bank that the material purchased by them is damaged or defective and request the bank not to make the payment, in such cases only bank can withhold the payment, otherwise the bank has to make the payment to the shop keeper. Therefore, in our considered view, there is no such relation between the bank and the shop keeper which establishes the relationship of a Principal and Commission Agent. Technically it may be written that bank will charge certain percentage of commission but this is not a commission because assessee sells its goods against credit cards, and on presentation of bills, the bank has to make the payment. It is not the case that bank has advised the assessee to sell their goods to its customers then he will pay the commission. It is reversed in a situation as bank issued credit cards to the credit card holders on certain fees or whatever the case may be and the card holder purchases material from the market through his credit card without making any payment and that shop keeper presents the bill to the bank against whose credit card the goods were sold and on presentation of bill as stated above the bank makes the payment. Therefore, in our considered view, provisions of section 194H are not attracted in this type of transaction.

Similar views have been held by the various ITATs on credit cards payments.

Therefore, we delete the addition confirmed by the learned CIT(A).

12.7 In the result, the assessee's appeal is allowed.

12.8 The cross appeal filed by the Revenue is against deleting the addition of Rs. 47,72,031/- @ 25% on unverifiable purchase of Rs. 1,90,88,142/-. The learned Assessing Officer observed that the assessee has declared gross profit of Rs. 6,59,45,825/- on sale of Rs. 18,82,88,100/- giving a G.P. rate of 35.02% as against the G.P. rate of 32.99% declared on sale of Rs. 17,54,76,309/- in previous assessment year. The assessee has shown following purchases.

Sl. No.	Name of the Party(s)	Amount
1.	Annu Exports	Rs. 6,70,100/-
2.	Century Gems	Rs. 43,38,151/-
3.	Millenium Enterprises	Rs. 4,05,050/-
4.	M/s Mohan and Company	Rs. 31,65,015/-
5.	M/s Clarity Gold Pvt. Ltd.	Rs. 99,98,298/-
6.	Ashu Gems	Rs. 5,11,510/-
	Total	Rs. 1,90,88,124/-

The learned Assessing Officer observed that there was no actual sale or purchase from these parties but had provided bills only to the assessee. The Assessing Officer issued 131 summons to M/s Anu Export but no reply was received nor summon returned unserved. In case of Clarity Gold Pvt. Ltd.

during the course of search & seizure operation as discussed in above paras that 90% of bills are bogus, which has been admitted by the Director of the company. The assessee was also asked to produce M/s Mohan and company, Ashu Gems, Century Gems and Millennium Enterprises for verification of purchases. The assessee submitted before the Assessing Officer that he had requested to these parties to appear before the Assessing Officer and also filed copy of letter received from Mohan and company and Century Gems. Finally, the assessee did not produce these parties for verification after lapse of 45 days. Thereafter, he gave show cause notice why these unverifiable purchases should not be added in the total income of the assessee. The assessee replied and after considering the assessee's reply, he relied upon various cases, which has been narrated in main order of the gems and jewellery i.e. M/s Indian Woolen Carpet Factory Vs. ITAT & Others (2002) 178 CTR 420 (Raj), held that the onus to prove the genuineness of purchases lies on the assessee, CIT Vs. Precision Finance Pvt. Ltd 208 ITR 465 (Cal.), that payment made by account payee cheque is not sacrosanct, CIT Vs. La Medica 250 ITR 575 (Del.) for purchase price treated as income from undisclosed source and various other cases also relied by the Assessing Officer on page No. 6 of his assessment order. He further held that closing stock is

unverifiable and valued by the assessee on estimate basis. Thereafter, he rejected the book result on the basis of unverifiable purchases of Rs. 1,90,88,124/-. After considering the assessee's reply, he estimated the income @ 25% of unverifiable purchases at Rs. 1,90,88,124/- after relying on the decision in the case of Sanjay Oil Cake Industries (supra) and other cases also.

12.9 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had deleted the addition by observing as under:-

"4.3 I have carefully perused the order of the A.O. and the submissions of the A.R.. I find that the Hon'ble ITAT Jaipur Bench "A", Jaipur has already given a finding on similar facts in the case of the assessee in A.Y. 2005-06. Since, there is no divergence of facts on this issue during this year, from the previous year adjudicated upon by the Hon'ble ITAT in the case of the assessee, the decision of the A.O. to reject the books of account and invoke the provisions of S. 145(3) is upheld.

4.4 The subsequent estimation of income is required to be made by taking into consideration the past history of the assessee as per the observations of the Hon'ble ITAT Jaipur Bench. The assessee has declared a g.p. rate of 35.02% as compared to a g.p. rate of 32.02% in the previous assessment year on an increased

turnover of Rs. 18,82,88,100/- as compared to turnover of Rs. 17,54,76,039/- in previous assessment year, the A.O. has not brought on record any new facts or evidence to controvert the findings of the ITAT in the case of the assessee on similar facts in A.Y. 2005-06. The impugned addition of Rs. 47,72,031/- is directed to be deleted."

12.10 Now the Revenue is in appeal before us.

12.11 The learned CIT DR vehemently supported the order of the Assessing Officer as the learned Assessing Officer reasonably estimated the income @ 25% on unverifiable purchases. He further repeated the same argument as mentioned in earlier paragraphs for revenue in burden of proof, cheque payment, rate of net profit, investigation made by the department on these parties through survey, search and also BCTT.

12.12 At the outset, the learned A.R. for the assessee vehemently supported the order of the learned CIT(A) particularly page Nos. 2 and 3. He further argued that in A.Y. 2005-06, the Hon'ble ITAT in assessee's own case had confirmed the order of the learned CIT(A) on the ground of better results declared in immediately preceding year in the case of Amrapali Jewellers Pvt. Ltd. 65 DTR 196 (Raj.). The Hon'ble Rajasthan High Court has upheld the proposition made by the ITAT that books of account rejected is justified but disallowance on unverifiable purchases should be based on appropriate

application of G.P. rate taking into consideration of past history of the case. The Hon'ble ITAT also confirmed the addition by applying suitable G.P. rate as against 25% disallowance of unverifiable purchases. The learned AR also drawn our attention on book result that during the year, the assessee has disclosed G.P. @ 35.02% as against 32.02% in preceding year. Therefore, he prayed to confirm the order of the learned CIT(A).

12.13 We have heard the rival contentions of both the parties and perused the material available on the record. As discussed above, in Jaipur, it is a rampant practice in gems and jewellery business that the parties are taking accommodation bills from the market to reduce the profitability. It is true that the assessee's G.P. has slightly increased from immediately preceding year. We also respectfully follow the Hon'ble Rajasthan High Court's finding on this issue that past history is the best guide but these guidelines are applicable on those assessees who occasionally found to indulge in such type of practices but as discussed above, the assessee in every year getting accommodation bill and deflating the profit by these accommodation entries. The past history of the case is doctored and can be relied upon. The learned A.R. for the assessee accepted that the books of account rejected by the Assessing Officer is justified on the basis of

unverifiable purchases. After considering both sides arguments, we feel that some reasonable net profit should be applied for deterrent effect, thus we disallowed 15% as net profit on the unverifiable purchases.

12.14 In the result, the Revenue's appeal is partly allowed.

(6) Shri Hemant Shrivastava (ITA No. 891/JP/2011 for A.Y. 2007-08

13. This is an appeal filed by the assessee against the order dated 11/08/2011 of the learned CIT(A)-II, Jaipur for A.Y. 2007-08. The effective grounds of appeal are as under:-

- "1. *In the facts and circumstances of the case and in law the learned CIT(A) has erred in confirming the action of the learned A.O. in not providing opportunity of cross examination of the persons whose statements have been used against the assessee. The action of learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire assessment order which is passed in gross violation of principles of natural justice.*
2. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of the learned A.O. in holding the purchases from the following parties as bogus:-*

S.No.	Name of parties from whom purchases made	Amount (in rupees)
1.	M/s Anshu Gems	17,49,887/-
2.	Jodhpur Gems	12,32,000/-
3.	Subhlaxmi Gems	18,92,790/-
4.	Vijay Gems	3,98,366/-
5.	Servorite Exports	16,26,150/-
	Total	68,99,193/-

The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by holding the above purchases as genuine.

3. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of the learned A.O. in rejecting the books of account of the assessee by invoking the provisions of Section 145(3) has not categorically confirmed the rejection of books. The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the rejection of books and deleting the trading addition of Rs. 17,24,798/-.*
4. *In the facts and circumstances of the case and in law the learned CIT(A) has erred in confirming the disallowance of Rs. 3,564/- out of the total disallowance of Rs. 7,129/- made by the learned A.O. out of telephone expenses. The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs. 3,564/-.*
5. *In the facts and circumstances of the case and in law the learned CIT(A) has erred in confirming the disallowance of Rs. 4,392/- out of the total disallowance of Rs. 8,784/- made by the learned A.O. out of Travelling Expenses. The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs. 4,392/-.*
6. *The assessee craves his right to add, amend or alter any of the grounds on or before the hearing."*

13.1 The grounds No. 1,2, and 3 of the appeal are against making addition of Rs. 17,24,798/- on account of unverifiable purchases of Rs. 68,99,193/- without providing cross examination of the persons, whose statement had been used against the assessee. The learned Assessing Officer observed that the assessee is in the business of manufacturing and trading of precious and semi precious stones. The assessee is running his business in the name and style of T.G.L. Group. During the year under consideration, the assessee had shown total sales of Rs. 2,65,63,549/- and gross profit of Rs. 10,07,812/- giving G.P. rate of 3.93%. In immediate preceding year, the total sales was Rs. 20,26,817/- and gross profit at Rs. 3,30,553/- G.P. rate @ 16.31%. The Assessing Officer gave reasonable opportunity of being heard on decline of G.P., which was submitted by the assessee. The learned Assessing Officer asked to furnish the confirmation of purchases in following cases, (i) M/s Anshu Gems, (ii) M/s Vijay Gems, (iii) M/s Savorite Exports, (iv) M/s Pooja Jewellers, (v) M/s Subh Laxmi gems & (vi) M/s Aashta Enterprises. Simultaneously, letters U/s 133(6) of the Act had also issued to parties from serial nos. 1 to 6 and also to M/s Jodhpur Gems. The letters were returned back by the postal authority with comment that no such person is residing at given address in case of Anshu gems, Vijay gems, Savorite Exports and Pooja

Jewellers. In case of Jodhpur Gems and Subh Laxmi Gems, no replies were received by him. The learned Assessing Officer further observed that during the course of search, Shri Ravi Haldia, who stated that these parties were issuing bogus bills and no goods are supplied by these parties. The learned Assessing Officer again asked to produce these parties to the assessee but he did not produce the same for verification. The learned Assessing Officer again gave reasonable opportunity of being heard on the basis of BCTT survey U/s 133A of the Act, search conducted in case of Moti Sons, Ravi Haldia and Shri Sanjiv Prakashan. When the assessee was not in position to produce these parties, the learned Assessing Officer concluded that book result cannot be relied upon as produced, is not verifiable, thus he rejected the book result U/s 145(3) of the Act. The assessee further submitted before the Assessing Officer that summons were received back with remark "receiver keeps the shop closed" in case of Anshu Gems, Vijay Gems and also claimed that summons were served but not appeared in case of Jodhpur Gems, Aastha Enterprises and Subh Laxmi Gems. This shows that parties are in existence. In case of Aastha Enterprises, the assessee had filed reply further he asked to provide copy of evidences collected from various surveys and searches by the

department against these parties to make his submission. He further relied upon the decisions of following case laws.

- (i) Vivek Kala Vs. ACIT ITA No. 211/JP/2006.
- (ii) G.M. Exports Vs. ITO ITA No. 900 and 935/JP/2005.

And argued that inability of the assessee to produce these parties from whom goods were purchased, cannot be basis of rejection U/s 145(3) of the Act. After considering the assessee's reply, he concluded that the assessee did not maintain the quantity and quality details of stock. Thus, opening and closing stocks are not verifiable. He further relied upon the decision of the Hon'ble ITAT, Jaipur Bench, in the case of Shri Kishan Malpani (ITA No. 1045/JP/1997) order dated 29/6/2004 and M/s Kanchwala Gems Vs. JCIT (supra) and held that in absence of qualitative details of stock, the rejection of book result is justified. Thereafter, he made best assessment on the basis of evidences available with him. The purchases to the tune of Rs. 68,99,193/- is not verifiable, G.P. has gone down heavily. It proves that the assessee had taken accommodation bills from these parties to reduce the profit of the assessee. Thus, he applied 25% income on unverifiable purchased of Rs. 68,99,193/- at Rs. 17,24,798/- by relying the decision in the case of Sanjay Oil Cake Industries and Vijay Protein Limited (supra).

13.2 Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the learned CIT(A), who had confirmed the addition by observing that the assessee had not produced M/s Anshu Gems, M/s Vijay Gems, M/s Savorite Exports, M/s Jodhpur Gems and M/s Subh Laxmi gems before the Assessing Officer for verification from whom total unverifiable purchases were at Rs. 68,99,194/-. He further stated that during the course of survey and search by the department, it was found that these parties are not in real business but providing accommodation bills without any delivery of goods. They received cheque and after withdrawing the cash they deduct commission varying between .2% to .25%. He further supported the findings given by the Assessing Officer. He further held that it is well settled law that as per rules of evidence had been applied to income tax proceeding and conclusive proof is also not necessary to arrive at any conclusion or to establish a fact. He further relied upon the decision of the Hon'ble ITAT, Jaipur Bench in the case of Deepak Dalela Vs. ITO 50 DTR 502 wherein Hon'ble ITAT held that "Looking to the circumstantial evidence, the A.O. held that purchases from few parties were not genuine and such purchases were made from open market. Hence the liability at the end of year in respect of such suppliers is not genuine. One has to consider the

totality of facts, surrounding circumstances and human probability for arriving at a conclusion. It is not the case of the assessee that purchases were on credit from others only which provided the bills of such concern. The assessee is not willing to come clean and hence one will have to take recourse for arriving at a conclusion on the basis of material on record.” He further relied the decision in the case of Shanti Kumar Chordia Vs ACIT (2010) 128 TTJ (JP) 708 wherein 22% of the addition held justified on bogus purchases. He further relied on the decision in the case of Kanchwala Gems (supra), G.G.Diamond International Vs. DCIT (2006) 104 TTJ 809 (Mumbai), CIT Vs. J.M.D. Computers & Communications (P) Ltd. (2009) 20 DTR 317 (Del.) ACIt Vs. Amar Mining Co. (2009) 123 TTJ (Ahd) TM 473, Balaji Textiles Industries Pvt. Ltd. Vs. ITO 49 ITD 177 (Mumbai Trib), Smt. Kusum Lata Thukral 327 ITR 424 (P&H HC), Tirath Ram Gupta Vs. CIT (2008) 304 ITR 145 (P&H HC), Sumati Dayal Vs. CIT 214 ITR 801. It is noticed by the learned CIT(A) that as on 31/3/2007, there were outstanding liability of Rs. 8,02,103/- in respect of the Anshu Gems and Vijay Gems. The appellant did not maintain any stock register. The qualitative details were also not available as admitted by the Auditor. Thus, it has been concluded that closing stock was valued on estimation. The learned CIT(A) held that the appellant had failed to prove

the genuineness of purchases made from M/s Anshu Gems, M/s Vijay Gems, M/s Savorite Exports, M/s Jodhpur Gems and M/s Subh Laxmi Gems and he confirmed the addition made by the Assessing Officer @ 25% on unverifiable/bogus purchases.

13.3 Now the assessee is in appeal before us.

13.4 The learned A.R. Shri Rajiv Sogani for the assessee submitted that detailed submissions were made before the learned CIT(A) for rejection of books of account. The learned CIT(A) relied upon in confirming the trading addition in case of Deepak Dalela, which has been recalled by the Hon'ble ITAT. Thus, it is not relevant to the proceeding. He further relied upon the decision in the case of Amrapali Jewellers (supra) wherein Hon'ble Rajasthan High Court as confirmed the findings of the Hon'ble ITAT and held that on the basis of unverifiable purchases, rejection of book result is justified and also net profit should be estimated on the basis of past history of the case. In case of Swarnaganga Jewellers Vs. ACIT ITA No. 833/JP/2011, the Hon'ble ITAT had followed the decision in the case of Amrapali Jewellers Pvt. Ltd. In following cases, the Hon'ble ITAT disallowed a suitable percentage of net profit on the basis of past history. In case of P.R. Gems Vs. ITO in ITA No. 514/JP/2011 and M/s Amrapali Jewellers (supra). It is further argued that

G.P. rate declined had been explained before the Assessing Officer, which was due to increase in the sale, substantially which was due to change of strategy adopted by the assessee. Therefore, he prayed to delete the addition.

13.5 At the outset, the learned CIT D.R. vehemently reiterated all the arguments made for all the cases of unverifiable purchases i.e. evidences were found during the survey, search proceeding and also on various enquiries that these parties have been providing accommodation bills in the gems and jewellery market in Jaipur to reduce the profitability. It is rampant practice in Jaipur market to take accommodation bill by incurring nominal expenses on it. Therefore, he prayed to confirm 25% disallowance of unverifiable purchases.

13.6 We have heard the rival contentions of both the parties and perused the material available on the record. As discussed above, in Jaipur, it is a rampant practice in gems and jewellery business that the parties are taking accommodation bills from the market to reduce the profitability. The assessee's G.P. has heavily declined from immediately preceding year. We also respectfully follow the Hon'ble Rajasthan High Court's finding on this issue that past history is the best guide but these guidelines are applicable on those assessees who occasionally found to indulge in such type of practices

but as discussed above, the assessee could not produce these parties for verification and not raised any ground of cross examination of evidence before the learned CIT(A). The learned A.R. for the assessee accepted that the books of account rejected by the Assessing Officer is justified on the basis of unverifiable purchases. After considering both sides arguments, we feel that some reasonable net profit should be applied for deterrent effect, thus we disallowed 15% as net profit on the unverifiable purchases.

13.7 Grounds No. 4 and 5 of the assessee's appeal are not pressed, therefore, the same are dismissed as not pressed.

13.8. In the result, the assessee's appeal is dismissed.

(7) **M/s H.K. Impex I.T.A. No. 342/JP/2012 & ITA No. 322/JP/2012 A.Y. 2007-08**

14. Both these appeals i.e. ITA No. 342/JP/2012 filed by the department and cross appeal being ITA No. 322/JP/2012 by the assessee for A.Y. 2007/08 arise against the order of learned CIT(A)-III dated 09/01/2012. The effective grounds of both the appeals are as under:-

Ground of ITA 342/JP/2012

"Whether on the facts and in the circumstances of the case and in law the learned CIT(A) is justified in restricting the trading addition of Rs. 1,00,000/- as against Rs. 12,48,080/- made by

the A.O. @ 25% of unverifiable purchases without considering the fact that assessee failed to discharge its onus to produce the sellers for verification of purchase claimed to have been made from them."

Ground of ITA 322/JP/2012

- "1. *The learned Commissioner of Income Tax (Appeals) has erred in facts and in law in making a lump sum addition Rs. 1,00,000/-.*
2. *The learned Commissioner of Income Tax (Appeals) has erred in facts and in law in confirming the Telephone Expenses of Rs. 18,687/-.*
3. *The assessee craves to amend, alter and modify any of the grounds of appeal.*
4. *The appropriate cost be awarded to the assessee."*

14.1 Ground No. 1 of both the appeals are against restricting and confirming the addition as against the Assessing Officer made addition of Rs. 12,48,080/- @ 25% on unverifiable purchases. The learned Assessing Officer observed that the assessee is in the business of Gems stones as manufacturer and wholesaler. During the year under consideration, the assessee had shown gross profit of Rs. 7,49,320/- on total sale of Rs. 34,18,548/- giving G.P. @ 21.91%. The assessee produced stock register during the assessment proceeding but was maintained on the basis of quantity not on the quality.

The learned Assessing Officer observed that in gems and jewellery, the valuation of stock is to be made on the basis of carat, clarity, cut and colour and purity of metal is always have a great importance in valuing the closing stock. The learned Assessing Officer concluded that it is undisputed fact that the assessee has not maintained details of stock. In absence of details of stock, value of closing stock was based on purchased price or market price on estimated basis, whichever is lower. Therefore, it has been held that closing stock of assessee had been shown on estimate basis and not subject to verification. The assessee had shown purchases from three parties as under:-

Sl. No.	Name of the parties from whom purchases made.	Amount
1.	M/s Ganpati Traders	9,95,500/-
2.	M/s Ratnam Jewellery	10,04,500/-
3.	M/s Umrao Exports	29,92,320/-
	Total	49,92,320/-

The assessee was asked to produce the above parties for verification vide show cause letter dated 07/12/2009, which could not be produced by the assessee before the Assessing Officer. Thereafter, independent enquiry was also got conducted to find out the genuineness of these purchases. The Assessing Officer further observed that in the year 2003, there was a search carried out by the department in the case of Sanjiv Prakashan group and on 20/4/2007 in case of Haldia Group. It was admitted that to regularise the

purchases made in cash, the assessee had to obtain bogus bills from different parties. The bills were made to the parties, who provided bill were shown through account payee cheque but immediately whole amount was received back in cash. The parties were provided bills only without actual delivery of goods. Survey by BCTT wing of the department was also conducted in the year 2007-08 and found that various persons were indulged in practice of issuing bogus bills in the trade of gems and jewellery. Here also, the parties had admitted that they provided only bills, no real trade was ever conducted by them. These persons were charging commission @ .2% to .25% on the quantum of bills issued. In case of M/s Umrao Exports, the BCTT Wing found during the course of survey that no stock, cash, books of account were found with the assessee. The firm was not doing any gems and jewellery business and only giving bills without actual delivery of goods. Further spot enquiry by the Ward Inspector at the business premises of M/s Ganpati Traders and Ratnam Jewellery was conducted and he was found that no business activity was carried out by the above parties. The learned Assessing Officer on the basis of evidence collected through various channels, gave reasonable opportunity of being heard to the assessee vide letter dated 17/11/2009 and 07/12/2009, which was responded by the assessee vide letter dated

26/11/2009 and 14/12/2009 respectively, which has been reproduced by the Assessing Officer on page No. 6 of the assessment order. After considering the both the replies of the assessee, he considered the Hon'ble Supreme Court decision in the case of Kanchwala Gems (supra), Indian Woolen Carpet Factory (supra), VISP (P) Ltd. (supra), Chuhan Mal Vs. CIT (supra), CIT Vs. Golcha Properties Pvt. Ltd. had concluded that primary onus is on the assessee to prove the genuineness of the purchases claimed. From primary facts of the purchases, the parties were in the knowledge of the assessee. It was his duty to provide the correct address or contact mode of the alleged suppliers. The investigation made by the department goes against the assessee and claim of the cheque payment to these parties was not sacrosanct. On this deficiency, found in the books of account of the assessee, he rejected the book result U/s 145(3) of the Act by relying on various decisions. When books are rejected, the Assessing Officer is to estimate the income reasonably U/s 144 of the Act on the basis of facts and circumstances of the case. Thus, after relying on the decisions in the case of Sanjay Oil Cake Industries and Vijay Proteins Pvt. Ltd. (supra), he applied 25% N.P. on bogus purchases of Rs. 49,92,320/- and made addition of Rs. 12,48,080/-.

14.2 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had partly confirmed the addition by observing that the N.P. in the current year was @ 3.22% was better than the previous year i.e. 1.36%. Still the Assessing Officer had made the addition U/s 145(3) of the Act of Rs. 12,48,080/- being 25% on unverifiable/bogus purchases of Rs. 49,92,320/- from three parties. The assessee has claimed that proper books, record and stock registers are maintained by the appellant and the payments against such purchases were made through account payee cheques only. Sellers of the goods are assessed to tax, therefore, provision U/s 145(3) of the Act cannot be involved in such cases and addition should be based on the past history of the case of the assessee. He also relied on the various decisions of Hon'ble Jaipur ITAT, thus he found, invoking the provisions of Section 145(3) of the Act contrary to the provisions of law. For estimation of income, he held that the case law referred by the Assessing Officer i.e. decision in the case of Sanjay Oil Cake Industries and Vijay Proteins Ltd. (supra) has been considered by the Hon'ble ITAT in the case of Gems Paradise, Suresh Chand Nahata and Rajendra Kumar Jain (supra) wherein the Hon'ble ITAT has considered the past history and current event of the case for estimation of income. After considering the above

decisions, the learned CIT(A) had not found the Assessing Officer's addition @ 25% justified and considered the assessee's past history and relied the decision in the case of CIT Vs. Gotan Lime Khanij Udyog (supra) and he confirmed the ad hoc addition of Rs. 1,00,000/- to take care all possible discrepancies and leakage of profit towards the adverse finding given by the Assessing Officer.

14.3 Now both the parties are in appeal before us. The learned CIT D.R. reiterated the arguments made in introductory para of this case and submitted that the facts of this case also identical with other cases of unverifiable purchases as during the course of search and survey operation conducted by the department on various parties, which has been referred by the Assessing Officer in the assessment order that these parties had provided only bills, no delivery of goods were made. The Assessing Officer had given sufficient opportunities to the assessee to produce these parties for verification, which has not been produced by the assessee. He only filed confirmation, PAN and TIN number, which cannot be verified in absence of suppliers. The learned Assessing Officer reasonably disallowed on account of unverifiable purchases by following the Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench

decision in the case of Vijay Proteins (supra), therefore, he prayed to confirm the addition made by the learned Assessing Officer and reversed the order of the learned CIT(A).

14.4 At the outset, the learned A.R. Shri P.C. Parwal for the assessee submitted that the assessee had maintained day to day books of account, which is subject to audit. These books are duly supported with bills and vouchers. The assessee has submitted the tax audit report alongwith the complete quantitative/qualitative details of closing stock of raw material and finished goods. The same was also submitted during the course of assessment proceedings vide letter dated 14/12/2009. All the purchases and sales are duly recorded in the stock register. There is complete linkage of goods purchased with items manufactured and sold or lying in the closing stock. In these circumstances, even if some of the purchases as per the Assessing Officer are unverifiable, there cannot be a disallowance of 25% of such purchases. Therefore, the rejection of books of account U/s 145(3) of the Act is not justified. For unverifiable purchases from the concerned parties of this case, the complete details of these parties were submitted during the course of assessment proceedings. He drawn our attention on page Nos. 13 to 21 of the paper book and claimed that burden of proof in case of

unverifiable purchases is not the same as burden of proof required U/s 68 of the Act. There is no law requiring the assessee to produce the parties from whom it had made purchases. If these parties are not appearing before the Assessing Officer in response to summons U/s 131, the Assessing Officer has other power under the Act to enforce the attendance. Why the department has not imposed the penalty on them. All these parties are assessed to tax at Jaipur and therefore, how the assessment had been completed on alleged non-existing persons. All these facts show that shelter has been given on the alleged parties. This proves that all the purchases made by the assessee were genuine. He also submitted that during the course of survey/search, these parties were found on given addresses, therefore, observation of the Assessing Officer that no concern was traced at the given address is without basis. Statement of various persons relied by the Assessing Officer in assessment order, cannot be a basis for holding that the purchases made by the assessee are non-genuine. Since in those statements, no question has been asked with reference to assessee. The parties providing the bills as per the statement cannot be universally applied in all other cases. Once the Assessing Officer relied on the statements, it is his duty to provide opportunity of cross examination to the assessee. It is not the case of the

department that the purchases rate/quantity of various items purchased from alleged unverifiable parties on different dates was less than the rate on which it was purchased on the date from other parties. The learned CIT(A) has accepted that the purchases of goods as per the bills raised by these parties has been made by the assessee but he presumed that purchases has not been made from these parties but from some other parties to whom payments might have been made in cash. This is only a presumption of CIT(A). The learned CIT(A)'s finding is without any basis. The Hon'ble ITAT has taken a consistent view that where purchases are unverifiable, books of account are to be rejected but the addition cannot be made by disallowance of 25% of purchases rather appropriate G.P. rate is to be applied considering the past history of the case and other surrounding circumstances. He also gave the G.P. rate for A.Y. 2005-06, 2006-07 and 2007-08 in his submissions. It is argued that during the year under consideration, the G.P. rate was 21.91%, which is better from immediate preceding year i.e. 16.42% and comparable to G.P. rate @ 10.34% in A.Y. 2005-06. He further relied upon the decision in the case of CIT Vs. Inani Marbles Pvt. Ltd. (supra) wherein it has been held that proper rate declared and accepted in preceding year constitute a good basis for working out gross profit. He further distinguished

case law relied by the Assessing Officer i.e. Kanchwala Gems (Supra), Chuhan Mal Vs. CIT (Supra), CIT Vs. Golcha Properties (Pvt.) Ltd. (supra), VISP (P) Ltd. vs. CIT & Anr. 265 ITR (supra), Indian Woolen Carpet Factory Vs. ITAT & Ors. (supra), ACIT Vs. Shrikishan Malpani 32 Taxworld 122 (JP) (Trib), DCIT Vs. Shri Sindhuja Foods (P) Ltd. (supra), M/s Sanjay Oil Cake Industries Vs. CIT (supra). He also relied on the following case laws.

- (i) CIT Vs. Amarpali Jewels (P) Ltd. (supra)
- (ii) CIT Vs. Precious Jewels Corporation (supra).
- (iii) Diagnostics Vs. CIT & Anr. 56 DTR 317 (Cal) (HC).
- (iv) Shankar Export Vs. ACIT (supra)
- (v) Malani Ramjivan Jagannath Vs. ACIT(supra).
- (vi) CIT Vs. Gotan Lime Khaniz Udyog (supra).
- (vii) CIT Vs. Leader Valves P Ltd. (supra).

Therefore, he prayed to confirm the order passed by the learned CIT(A).

14.5 We have heard the rival contentions of both the parties and perused the material available on the record. The assessee has not challenged the rejection of book result as defects pointed out by the Assessing Officer are sufficient to reject the book result U/s 145(3) of the Act. The department had conducted survey and search in various cases as mentioned by the Assessing Officer as well as the learned CIT(A). On investigation, it is found that three parties were also indulged in providing

accommodation bills. The sufficient opportunities have been given by the Assessing Officer to prove the genuineness of the purchases. The Assessing Officer himself issued the notices to these parties but either notices were not served or not returned back. The assessee could not produce these parties for verification during the course of assessment proceedings. Even the Assessing Officer provides reasonable opportunity of being heard to the assessee. The learned Assessing Officer applied Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench decision in the case of Vijay Proteins where 25% disallowance held reasonable on unverifiable purchases. The A.R. of the assessee tried to distinguish this case with facts and circumstances and argued to apply past history of the case. The onus is on the assessee to prove these purchases genuine. The assessee also could not be able to lead any evidence in furtherance of filing of confirmatory letter or merely showing that the payments were made by account payee cheques. The assessee was aware of the whereabouts of the parties and he should have produced these parties before the Assessing Officer for verification of purchases, which could not be done at the stage of assessment proceedings. It has been established that these parties were providing accommodation bills, no goods were supplied by

them. The assessee only produced confirmation, PAN and TIN number and claimed that payments were made through account payee cheques whereas in investigation, the cash has been withdrawn from the sellers account immediately after clearance of the cheques. The past history of the assessee is also not reliable. This finding is also got support from the decision of Hon'ble Rajasthan High Court in the case of Venus Arts & Gems order dated 20/8/2014 wherein it has been held that order passed by the ITAT for confirming G.P. after rejection of books of accounts on the basis of various discrepancies found by the Assessing Officer. In the Hon'ble court's view, there is no question of law. Even the assessee may be 100% exporter which does not preclude the Assessing Officer from enquiring into the genuineness of the purchases. Therefore, we have considered view that 15% N.P. on unverifiable purchases is reasonable in this case. Accordingly, the assessee's appeal is partly allowed.

14.6 The second ground of assessee's appeal is against confirming the telephone expenses of Rs. 18,687/- by the learned CIT(A). The learned Assessing Officer found that the assessee had debited telephone expenses of Rs. 63,904/- and mobile expenses of Rs. 29,529/-. The assessee had not maintained details of calls/use of mobile and had not adduced any evidence

to prove that the expenditure claimed by the assessee were wholly or exclusively incurred for the business purposes. The personal use and non-business use, cannot be ruled out. Thus, he disallowed 1/5th out of total expenditure of Rs. 93,433/- at Rs. 18,687/-. In appeal, the learned CIT(A) had confirmed the addition by following the decision passed by the Hon'ble jurisdictional High Court in the case of Kanahiya Lal Jangir 217 CTR 354, in absence of complete evidence of expenses. The learned AR for the assessee submitted that these expenses were incurred wholly for the purpose of business and duly supported with the proper bills/vouchers. There is no personal use of telephone. Maintenance of call register is practicably not possible. The lower authority has not mentioned any particular expenses unvouched, therefore, no disallowance can be made from the telephone expenses. He relied upon the decision in the case of CIT Vs. Oracle Indina (P) Ltd. 199 Taxman 181 (Del.) (HC) and Arthur & Anderson & Co. Vs. ACIT (2010 TION 416 ITAT) and further argued that the disallowance made by the Assessing Officer is excessive and it should be restricted @ 10% by relying upon the decision passed by the Special Bench in the case of Topman Exports Vs. ITO 124 ITD 1 (Mum). At the outset, the learned CIT DR argued that a reasonable disallowance may please be confirmed.

14.7 After considering both the sides, we find 10% disallowance reasonable out of total telephone expenses at Rs. 93,433/-. Thus, the assessee gets part relief.

14.8 In the result revenue's appeal as well as assessee's appeal are partly allowed.

(8) M/s Kinu Baba Jewellery Pvt. Ltd., Jaipur (ITA No. 1053/JP/2011 and C.O. No. 13/JP/2012) for A.Y. 2008-09 (Transferee Company)

15. The cross objection filed by the assessee is not pressed at the time of hearing of the appeal, therefore, we dismiss the cross objection as not pressed.

15.1 In Revenue's appeal the learned Assessing Officer observed that the assessee deals in the business of manufacturing and trading of gold and silver jewellery studded with diamond and colour stones. During the year under consideration the assessee had shown gross profit of Rs. 76,19,995/- on total sales of Rs. 1,33,81,777/- giving G.P. rate of 56.94% but declaring loss at Rs. 20,65,885/-. The learned Assessing Officer observed that the assessee was maintained closing stock on quantity wise not quality wise and closing stock has been maintained on estimate basis. As mentioned above, there were two unverifiable parties in this case for non-genuine purchases of

Rs. 15,50,097/-, which assessee failed to produce. One of the party involved in this racket namely M/s Ashish Jewellers was covered U/s 133A of the Act by the BCTT authorities. It remains uncontroverted that no business activities were conducted by the parties, no cash and stock was found, no books and other documents were found and parties were mainly providing accommodation entries of purchases to other person in the garb of sale/purchase. The learned Assessing Officer issued summons U/s 131 of the Act to M/s Ashish Jewellers and notice U/s 133(6) of the Act to M/s Marudhar Diamond Pvt. Ltd., which were returned back unserved. The learned Assessing Officer had rejected the book result U/s 145(3) of the Act on the basis of unverifiable purchases. After relying the various decisions of burden of proof and rejection of books of accounts U/s 145(3) of the Act, he disallowed 25% of claimed purchases from the unverifiable parties at Rs. 3,87,749/-.

15.2 Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the learned CIT(A), who had confirmed the rejection of books U/s 145(3) of the Act but deleted the addition on the ground that average G.P. on past history of the case is best guide and during the year G.P. has increased substantially compared to preceding years.

15.3 Now the Revenue is in appeal before us. As discussed in preceding paras that two parties have provided bills to the assessee, which could not been produced by him for verification before the Assessing Officer even summons/notices returned back from the given address. The assessee also failed to produce the parties for verification, therefore, the learned CIT(A) was not right in deleting the addition by considering the G.P. as well as past history of the assessee.

15.4 At the outset, the learned A.R. Shri Rajiv Sogani for the assessee took the same line of arguments and vehemently argued that the assessee has provided copies of bills, payments were made through account payee cheques. The appellant was maintaining quantity wise details of stock in stock register. The closing stock could be valued from the supporting bills. The disallowance @ 25% was not just because the Assessing Officer has not brought on record any evidence to prove that these purchases were inflated by 25% as compared to purchases from other parties and case laws relied by the Assessing Officer are not squarely applicable. Therefore, it is prayed to confirm the order of the learned CIT(A).

15.5 We have heard the rival contentions of both the parties, perused the material available on the record and above discussion made in this order,

it is evident that during the course of investigation made by the department, number of parties were not found in existence on given addresses. No goods, cash, even books of account were found during the course of survey at the business premises of Ashish Jewellers by BCTT wing of the IT Department. The summons/notices were issued by the Assessing Officer, which were returned unserved. Even the assessee could not produce these parties for verification before the Assessing Officer, therefore, it is undisputed fact that these parties had provided only bills, no goods were supplied by them. As discussed above, it is rampant practice in the gems and jewellery trading to arrange the accommodation bills to reduce the profit which were taken by the assessee from the aforesaid two parties. The learned AR had disallowed 25% from the unverifiable purchases which have been deleted by the learned CIT(A) on the basis of G.P. but fact is that the transactions made with two parties are unverifiable. If these purchases reduced from the total purchases of the assessee, the profit of the assessee automatically increased to that extent. When there is no genuine purchase from these parties to that extent, closing stock also remains unreliable as no goods have been received from these parties. In this case, cheques were issued but there is no evidence with the revenue that cash has been returned back to the assessee. Therefore, we

feel reasonable disallowance on these unverifiable purchases @ 15%. Accordingly we reverse the order of the learned CIT(A).

15.6 Second ground of appeal of the Revenue is against allowing relief of Rs. 39,26,100/- on account of capital gain arising from transfer of business of the assessee to its group company. The Assessing Officer observed that during the year under consideration, the assessee sold its jewellery business as going concern with all its assets and liability for Rs. 1054.49 lacs pursuant to agreement dated 21/08/2007 with M/s Kinu Baba Jewellery India Pvt. Ltd.. No income/capital gain has been declared by the assessee in its return of income. The Assessing Officer gave reasonable opportunity of being heard on this issue. The assessee was asked to furnish audit report in form No. 3CEA for slump sale which was submitted by it on 08/12/2010. As per this audit report, there was net short term capital gain computed by the Assessing Officer at Rs. 29,000/-, which has been accepted by the assessee. It is further observed that in consideration, there is inclusion of 250000 shares of M/s Kinu Baba Jewellery India Pvt. Ltd. @ 10 per share. The Assessing Officer again gave reasonable opportunity of being heard on the issue of correct valuation of consideration received by the assessee on transfer of going concern, which was availed by the assessee vide letter dated 24/12/2010.

The fair value of unquoted equity share of M/s Kinu baba Jewellery India Pvt. Ltd. was calculated @ 8.5 rupees per share as on 31/3/2007 as per Rule 11U(B) of the Income Tax Rules, 1962 (hereafter referred as the Rules. The learned Assessing Officer was not satisfied with the calculation made by the assessee company per share of transferee company. It is further found that shares was allotted in November, 2007 and February, 2008 whereas value was calculated by the assessee as on 31/3/2007. There was a survey on transferee company, who surrendered undisclosed investment in stock at Rs. 2.29 crores. This stock was accumulated in a day or two but it was representing investment of money earned over a period of time. There was reserved and surplus credited at Rs. 1,81,04,041/- on 31/3/2008 in transferee company, which represents profit earned during the year. This surplus was Nil as on 31/3/2007. The learned Assessing Officer recalculated the per share value after considering the accumulated profit as on 31/3/2008 and number of shares held by the transferee company. He found the fair market value of the share allotted at Rs. 64,26,100/- as against Rs. 25,00,000/- shown by the assessee. The difference of Rs. 39,26,100/- was assessed as short term capital gain on account slump sale.

15.7 Being aggrieved by the order of the learned Assessing Officer , the assessee carried the matter before the learned CIT(A), who had confirmed only addition of Rs. 29,000/- and deleting the addition of Rs. 39,26,100/- by observing that the assessee company received 250000 shares @ Rs. 10 per share in lieu of the transfer on 21/8/2007 of running business. The balance of Rs. 1029.49 lacs was converted into interest free loan. Subsequently, 240000 shares were allotted on 30/11/2007 and 10000 on 20/2/2008 to appellant. Excess stock found in case of transferee company as on 3/3/2008 was surrendered and disclosed this income in the return by it. The transferee company has also allotted shares to 29 other applicants @ Rs. 10 per share. The transferee company was not engaged in the business of trade of gems and jewellery prior to 31/3/2007. It has rental income only. As per CIT(A), the valuation of share is to be made under Rule 11U(a) of the Rules on date of transfer i.e. 21/8/2008 not subsequently. There is no evidence behind the assumption that the excess stock of transferee company is to be considered for valuation of share. There is no evidence that the assessee had transferred its stock by own valuing it. Similarly, the reserved and surplus of transferee company as on 31/3/2008 cannot be used as a base for valuation of shares. Accordingly, she held that the learned Assessing

Officer was not right to add Rs. 39,26,100/- was short term capital gain in the total income of the assessee.

15.8 The learned DR vehemently supported the order of the learned Assessing Officer and argued that he correctly calculated the value per share on the basis of information available with him.

15.9 The learned A.R. submitted that the order of the learned CIT(A) is fully justified. She had duly appreciated the fact and legal submissions made before her in respect of valuation of shares as on 31/8/2007.

15.10 We have heard the rival contentions of both the parties and perused the material available on the record. The learned CIT(A) had accepted the actual date of transfer of business on 21/8/2007 whereas learned Assessing Officer had concluded that date of allotment of the shares was November, 2007 and February, 2008 and value has been taken by the assessee as on 31/3/2007. The learned CIT(A) has not given specific finding why she has accepted date of transfer i.e. 21/8/2007. It has not been come out from the order of the learned CIT(A) and submission made before her that Rule 11U(a) of the Rules has been applied meticulously. The valuation date defines in Rule 11U(j) of the Rules i.e. valuation date means the date on which the property or consideration as the case may received by the

assessee, which was amended w.e.f. 29/11/2012 prior to its substitution clause (j) read as under:-

"Valuation date means the date on which the respective property is received by the assessee."

It is immaterial whether transferee company has supported its business or not or having any income from the trading of gems and jewellery, which has not been excluded or explained in rule itself. Therefore, this issue is set aside to the Assessing Officer and he is directed to compute fair market value of unquoted share as per the Rule 11U(a) of the I.T. Rules on the valuation date.

15.11 In the result, the appeal of the revenue is partly allowed.

(9) **M/s Lakhi Gems ITA No. 831/JP/2011 and ITA No. 892/JP/2011 for A.Y. 2003-04**

16. Both appeals i.e. ITA No. 831/JP/2011 filed by the assessee and cross appeal i.e. ITA No. 892/JP/2011 by the department are against the order dated 03/08/2011 passed by the learned CIT(A)-I, Jaipur for the A.Y. 2003-04.

16.1 The ground No. 1 of the assessee's appeal is against confirming the trading addition of Rs. 8,07,643/- by applying G.P. rate of 20% as against

G.P. rate of 14.75% declared by the assessee. Whereas the Revenue's appeal is against deleting the addition from Rs. 28,01,897/- to Rs. 8,07,643/- and reducing G.P. rate from 25% to 20% by the learned CIT(A). The learned Assessing Officer observed that the assessee is in the business of trading and export of precious and semi precious stones. During the year under consideration, the assessee has shown gross profit of Rs. 22,70,660/- on total sale of Rs. 1,93,91,516/- giving G.P. rate of 14.75%. The Assessing Officer observed that the assessee had not maintained stock register. The appellant had maintained the closing stock on the basis of purchase price or market price on estimate basis, whichever is low. Being closing stock on estimated basis, which could not be subject to verification. The assessee had shown purchases from following 15 parties mentioned in the introductory paragraphs, as Rs. 1,12,07,589/-. The assessee was asked to produce these parties for verification but it had failed to produce the same for verification. For verification of purchases, independent enquiry was also conducted to ascertain the genuineness of these purchases by the department in year 2003 in the case of Sanjiv Prakashan Group, Haldia Group in the year 2007 and BCCT Wing of the department in the year 2007-08 and found that in Jaipur number of parties were indulged in providing and getting accommodation bills

to deflate the profit. The accommodation entries provided was charging commission @ .20 to .25% for issuing bogus sales bills. In some cases, commission was higher as much as .5% to .6%. During search in the case of Haldia Group U/s 132 of the Act conducted during the year 2007-08, Shri Ravi Haldia categorically stated that no real business was being conducted by the parties namely M/s Niki Enterprises, M/s D.J. Impex, M/s Manviya Exports, M/s S.V. Enterprises, M/s M.V. Gems International, M/s Rahul Exports, M/s M.D. Exports and M/s Ambika Impex. The learned Assessing Officer reproduced the statement of Shri Ravi Haldia at pages 4 to 9 of the assessment order. The learned Assessing Officer concluded that statement of Shri Ravi Haldia clearly corroborates the other findings in this order to show that the purchases claimed by the assessee are not genuine. In case of M/s Nidhi gems, M/s A.R. Exports, M/s Adinath Gems and M/s Govindam Jewellers, a survey operation was conducted by the BCTT authority of the department and it was found that at the given address of these parties, no business activities were conducted. There was no cash, stock, books or other relevant documents were found therefrom. They merely provided accommodation entries to interested parties in the garb of sale/purchase. In case of M/s Sapna Gems, M/s Pragati Gems and M/s pooja Exports, enquiry

was conducted by the department and found these parties were merely providing accommodation entries to other persons in the garb of sale/purchase. The Assessing Officer gave reasonable opportunity of being heard to the assessee on unverifiable purchases from above said parties. The Assessing Officer also issued summon to all 15 parties for appearing with books of account on 02/12/2010 but summons were returned unserved in all cases except M/s Nidhi Gems and M/s Manviya Exports where no compliance was made. The assessee was also requested to produce these parties for verification but it failed to produce the same. The Assessing Officer concluded that no stock register is maintained by the assessee and further the assessee has accepted that no inventory of opening and closing stock were kept. Accordingly, he found closing stock unverifiable. When number of defects had been found by the Assessing Officer, he gave show cause notice as to why, book result should not be rejected U/s 145(3) of the Act and also relied various decisions particularly decision in the case of M/s Kanchwala Gems (supra), Indian Woolen Carpet Factory (supra), Chuarmal Vs. CIT (supra), CIT Vs. Golcha Properties Pvt. Ltd. (supra) and rejected the books of account. Thereafter, he decided the income U/s 144 of the Act by relying the decision in the case of Sanjay Oil Cake Industries and Vijay Protein (supra),

Nandkishore Meghraj Jewellers (supra) and applied 25% disallowance on unverifiable purchases of Rs. 1,12,07,589/-.

16.2 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had sustained the addition partly by observing as under:-

"4.4 I have carefully perused the order of the A.O. and the submissions of the AR. The Hon'ble ITAT Jaipur Bench has consistently held in cases of jewelers where bogus purchases have been detected by the Department that the books of accounts are to be treated as unreliable and are to be rejected under the provisions of S. 145(3). On same facts in the case of the assessee in subsequent A.Y. 2005-06 the Hon'ble ITAT Jaipur Bench has upheld the decision of the A.O. regarding rejection of the books of account and has upheld the application of the GP rate of 16.16% on sales of Rs. 25500660/-. Considering that the assessee was not able to bring any evidence on record to rebut the evidence brought on record by the department regarding the unverifiable purchases it is held that the assessee has failed to discharge its onus and the rejection of the books of accounts of the assessee U/s 145(3) is upheld given the finding of the Hon'ble ITAT Jaipur Bench in assessee's own case on similar facts in subsequent A.Y.

Regarding estimation of income it has also been the consistent view of the Hon'ble ITAT Jaipur Bench that past history is the

best guide for estimating the income of the assessee, however, the assessee has not submitted any record of its past history. It is the consistent view of the Hon'ble ITAT Jaipur Bench that the GP is always better on lower sales since the GP of the assessee has been accepted at 16.16% on sales of Rs. 25500660/- in A.Y. 2005-06 a GP of 20% is held to be justifiable on the sales of Rs. 15391516/- during the year. As the assessee has declared GP of Rs. 22,70,660/- an addition of Rs. 8,07,643/- is sustained."

16.3 Now the assessee as well as the revenue are in appeal before us.

16.4 The learned A.R. Shri P.C. Parwal for the assessee submitted that the assessee is maintaining complete day to day books of account, which is subject to audit. These books of accounts are supported by bills and vouchers. The observation of Assessing Officer that closing stock of assessee is on estimate basis and not subject to verification is incorrect inasmuch as the year at the year end and stock is physically verified and valued at lower of cost or market price. The assessee is engaged in 100% export and there are no local sales. Export sales are also subject to control of custom authorities and Reserve Bank of India. The Assessing Officer has accepted the sales. There cannot be sale without purchase. In these circumstances, even if some of the purchases as per the A.O. are unverifiable, there cannot be a

disallowance of 25% of such purchases. It is further argued that burden of proof on the assessee is not the same as the burden of proof required U/s 68 of the Act. There is no law requiring the assessee to produce the parties from whom it has made purchases. If these purchases were not responded in response to notice U/s 131 of the Act, the Assessing Officer has another power under the Income Tax Act to enforce the attendance. All these parties are assessed to tax at Jaipur and therefore how the assessment has been completed on the alleged non existing person. All these facts show that shelter has been given to all these alleged parties. The learned Assessing Officer only made addition on the basis of survey/search conducted and investigation made but this information has not been asked with reference to the assessee. The Assessing Officer relied upon on the statement, it is his duty to provide cross examination to the assessee. The Hon'ble ITAT has taken consistent view that disallowance @ 25% on unverifiable purchases cannot be made but it should be G.P. rate is to be applied considering the past history of the case and other surrounding circumstances. In present case, since the assessee does not have any record on earlier assessment years, the subsequent history can be considered for application of G.P. rate. The G.P. rate declared by the assessee is better as compared to all the

subsequent years except in A.Y. 2005-06. The finding given by the learned CIT(A) supports the case of the assessee. Therefore, application of G.P. rate @ 20% is excessive and unjustified. Therefore, it is prayed to delete the trading addition confirmed by the learned CIT(A) and allow the assessee's ground of appeal.

16.5 The learned D.R. reiterated the argument as given in cases of others as the onus is on the assessee to prove the genuineness of the purchases made by the assessee. The Assessing Officer rightly applied the case laws referred in assessment order and disallowance @ 25%. The learned AR has not pressed the rejection of books of account U/s 145(3) of the Act in this also. It appears from the assessment order that the assessee is doing this business from past but figures are not available in assessment order and paper book submitted by the assessee as per Hon'ble ITAT order for A.Y. 2005-06, the assessee always has unverifiable purchases. In A.Y. 2004-05 unverifiable purchases was at Rs. 1,80,12,079/-, in A.Y. 2005-06 (in the order), in A.Y. 2006-07 at Rs. 78,45,505/- and in A.Y. 2007-08 at Rs. 1.27 crores. Therefore, the assessee's past history is totally doctored, which is not best guide for deciding the income of the assessee as held by the Hon'ble Rajasthan High Court that the past history can be applied where the assessee

has occasionally found fault of unverifiable purchases. In this case, the assessee always getting accommodation bills. Therefore, addition made by the Assessing Officer should be confirmed. He also reiterated the facts mentioned by the Assessing Officer in assessment order.

16.6 We have heard the rival contentions of both the parties and perused the material available on the record. The Income Tax Department had investigated through survey and search for unverifiable purchases. Number of parties involved, who provide the accommodation bills and came to conclusion that on the basis of evidences collected and statement recorded during the course of search/survey that the parties not existed on the given addresses and they do not have any goods to supply. They are only providing accommodation entries to reduce the profitability of the recipients of the bills. It is rampant practice in Jaipur gems and jewellery business as number of parties were found indulged in accommodation entry business as mentioned above in introduction paras of this order. The assessee neither asked to cross examine the parties before the lower authorities. Further the learned A.R. alleged that department had given shelter to these parties, are baseless and found beyond the imagination. Therefore, we have conscious view that 15% Net profit is justified to prevent such type of non-genuine transactions

activity. Accordingly we allow the Revenue's appeal and dismissed the appeal of the assessee.

16.7 The second ground of assessee's appeal is against no allowing deduction U/s 80HHC of the Act on trading addition confirmed by the learned CIT(A). The learned Assessing Officer and learned CIT(A) have not allowed the deduction U/s 80HHC of the Act. The assessee claimed that Assessing Officer made addition of Rs. 28,01,897/- but not allowed deduction U/s 80HHC of the Act. Similarly, the learned CIT(A) also not allowed deduction U/s 80HHC of the Act, who had confirmed the addition of Rs. 8,07,643/-. In A.Y. 2004-05, the Assessing Officer allowed 30% deduction U/s 80HHC of the Act at Rs. 13,50,906/-. He further relied the decision in the case of CIT Vs. Bawa Skin Company (2007) 294 ITR 537 (P&H) (HC) and Divine International Vs. DCIT (2012) 134 ITD 148 (Del.) (Trib.). The learned DR vehemently opposed the deduction U/s 80HHC of the Act as no claim for 80HHC deduction in form No. 10CCAB submitted alongwith return. As per this report, if any export made and realized within the prescribed time, then deduction is allowable. The assessee has not claimed this deduction before the Assessing Officer, which was raised first time before the learned CIT(A), therefore, it is not allowable.

16.8 We have heard the rival contentions of both the parties and perused the material available on the record. The assessee has not claimed deduction U/s 80HHC of the Act before the Assessing Officer in prescribed proforma as mentioned by the learned DR alongwith the return. There is no evidence alongwith paper book, which shows that the assessee calculated deduction U/s 80HHC of the Act in computation of income. Even there is no note in the computation in case of addition made on account of any reasons, the deduction would be allowed. The case law relied by the assessee are not squarely applicable on the facts of the case. Those assessees claimed this deduction in originally alongwith return in prescribed proforma. Recently the Hon'ble Rajasthan High Court in the case of Venus Arts & Gems Vs. ITO vide order dated 20th August, 2014 has held in identical case of unverifiable purchases that the assessee is 100% exporter but that does not mean that the Assessing Officer is precluded from enquiring into the purchases, which were made by the assessee from the said sellers. The Hon'ble High Court in case of unverifiable purchases has held that, it is purely a finding of fact by the two appellate authorities as to what should be a reasonable G.P. rate after rejection of books of account and various infirmities noticed by the lower authorities and in their view no question of law much less substantial question

of law can be said to emerge out of the order of the Tribunal. Therefore, we do not find any reason to intervene in the order of the lower authorities. This ground of appeal is dismissed.

16.9 In the result, appeal of the assessee is dismissed and revenue's appeal is allowed.

(10) **Shri Kumud Chand Jain HUF (ITA No. 52/JP/2011 for A.Y. 2008-09)**

17. This is an appeal filed by the assessee against the order dated 24/11/2011 passed by the learned CIT(A)-I, Jaipur for A.Y. 2008-09. The sole ground of appeal is against confirming the addition of Rs. 7,05,215/- by estimating the commission income of the assessee at Rs. 8,40,338/-. The assessee filed return on 23/9/2008 at Rs. 1,53,813/- in the status of HUF. The assessee HUF was engaged in issuing bills to the business men who had doing the business of precious and semi precious stones and charged Rs. 100 to 200 per lac of amount shown in the bills issued. The assessee had shown in the return total amount of the bills issues and on which only commission was charged. The assessee had not filed audit report, copy of balance sheet, trading account, profit and loss account. The Assessing Officer gave reasonable opportunity of being heard to the assessee on audit report as well

as asked to produce the copy of bank statement. The assessee did not cooperate with the Assessing Officer and had not filed any information required by him, therefore, he made order U/s 144 of the Act. As per return of income the assessee is engaged in the business of precious and semi precious stones. In the return of income, the assessee had shown total sales of Rs. 16,80,47,697/- declared purchase of Rs. 14,50,71,392/- showing opening balance of Rs. 6,20,57,581/- and closing stock of Rs. 3,84,50,756/-. The Assessing Officer further observed that in the year 2003, there was search and seizure operation carried by the department in the case of Sanjiv Prakashan Group and thereafter investigation was carried out by the department. It was found that some of the parties are involved in the racket of providing bills without actual delivery of goods to different parties in the trade of gems and jewellery. The modus operandi of these parties were that bills were issued and cheques received against the bills, were immediately withdrawn from the bank in cash in the next few days and purchases against the bills were shown in the cash. There was survey by BCTT wherein in the year 2007-08 similar racket was also discovered by the department and it was found that commission @ .20% to .25% was charged for issuing these bogus sales bills. In some cases, the commission was higher as much as .5% to

.6%. In case of assessee, survey authorization issued by BCTT Wing could not be executed as the assessee was non-existent at the given address. Similar information was also received by the Assessing Officer from DIT investigation Jaipur pursuant to search conducted in case of Haldia Group on 20/4/2007 wherein it has been categorically admitted that they have obtained bogus bills from different parties in F.Y. 2004-05 and further subsequent years. He also admitted that payments made to all these parties were shown through cheque but immediately amount was received back in cash. In A.Y. 2007-08, the learned Assessing Officer assessed the assessee's income @ .5% at Rs. 8,34,488/- on total bogus bills of Rs. 16,68,97,578/-. The learned Assessing Officer in the year under consideration has also calculated income @ .5% on total bogus bills of Rs. 16,80,47,697/- and addition under the head "other income" at Rs. 24,98,119/- was made.

17.1 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had confirmed the addition of Rs. 7,05,215/- on account of undisclosed commission income but deleted the addition of Rs. 24,98,119/- on account of addition made under the head "other income".

17.2 Now the assessee is in appeal before us.

17.3 Learned A.R. Shri P.C. Parwal for the assessee argued that only issue in the present appeal whether the Assessing Officer was justified in assessing the business income by applying net commission rate of .5% on sale bills issued by the assessee. The Assessing Officer himself admitted that persons issuing the bills in this trade charged commission @ .2% to .25% only, in some cases, higher commission is charged. There is no material on record, which shows that the assessee had charged higher commission. The assessee had categorically stated in his affidavit that he used to charge commission @ Rs. 100 to 200 per lac i.e. .1% to .2%. Therefore, there is no justification in estimating the assessee's income @ .5%. He further calculated commission @ .2%, which is highest as mentioned in the assessment order as well as in the affidavit, which would be worked out at Rs. 2,36,095/-. Thereafter, various expenses are to be allowed for running and providing accommodation bills. The assessee had offered income of Rs. 34,023/- under the head "business income" and Rs. 1,01,000/- as miscellaneous receipt under the head "income from other sources". This miscellaneous income is nothing but the commission receipts done as income from other sources. Thus, effectively, the assessee had declared commission of Rs. 1,35,023/- which works out of .08% of the sale bills. He also drawn our attention on the

decision of Hon'ble ITAT Delhi Bench in the case of SanjayKumar Garg Vs. ACIT (2012) 134 ITD 82 (Del.) wherein identical case of accommodation entry was assessed @ 1% by the Hon'ble ITAT. Therefore, he prayed to accept the returned income of the assessee.

17.4 At the outset, the learned CIT DR vehemently supported the order of the learned CIT(A) and argued that a detailed order had been passed by the learned CIT(A) after considering the affidavit of the assessee, in past also in the assessee's case, income on the basis of .5% had been assessed in A.Y. 2007-08. There is no evidence before the Hon'ble Bench that these additions have been challenged by the assessee or not before any appellate authority. Therefore, addition may be confirmed.

17.5 We have heard the rival contentions of both the parties and perused the material available on the record. It is undisputed facts that that on given address, no firm was found inexistence, therefore, survey authorization could not be executed. The assessee did not furnish any audit report, copy of bank account during the course of assessment proceedings before the Assessing Officer, which was also not produced before the learned CIT(A), only an affidavit was filed before her, wherein it has been admitted by the assessee that he was earning commission @ Rs. 100 to 200 per lac. The

learned CIT(A) gave the opportunity to the assessee during the appellate proceeding why the assessee charged lesser commission compared to others in the line of accommodation entry. There was no submission with evidence. In past in A.Y. 2007-08, the learned Assessing Officer computed the assessee's income @ .5% on bogus bills supplied. There is no evidence that the assessee has challenged the addition made in A.Y. 2007-08. The case laws relied by the assessee is not applicable as there was a survey operation on entry provider, who had admitted during the course of survey proceedings that there was a further expenses to be incurred for providing the accommodation of bills. No such admission had been made by the assessee before the lower authorities. Need not to mention here that the assessee has provided accommodation entry in the year under consideration more than Rs. 16 crores and also in preceding year more than Rs. 16 crores, it means more than 32 crores income had been concealed through these accommodation entries by the recipient of these accommodation bills. Therefore, we confirm the order of the learned CIT(A).

17.6 In the result, assessee's appeal is dismissed.

(11) Shri Ravi Sancheti (ITA No. 315/JP/2012 for A.Y. 2008-09)

18. The first ground of the Revenue's appeal is against treating the business income of Rs. 28,09,602/- accrued on account of sales of commercial complex as capital gain. The learned Assessing Officer observed that the assessee has constructed and sold commercial complex named Vimal Chambers at 176, Haldiyan Ka Rasta, Johari Bazar, Jaipur. The area was about 3400 sq.fts. and building is containing three floors and basement. The land on which, the complex is constructed was purchased by the assessee from Shri Gulab Chand Sacheti for consideration of Rs. 8 lacs on 25/6/2001. At the time of purchase, there was a double storied construction at the land wherein tenants namely Shri Vinay Chand Daga, Shri Surendra Singh Jain, Shri Sharad Kumar Dhariwal and Shri Satya Narayan Totala were residing. Subsequent to purchase of land, the assessee demolished existing construction in March, 2005 and started new construction in June, 2005. The new construction was in the shape of a commercial complex named Vimal Chambers. The assessee started construction of complex and thereafter he sold few shops to buyers or investors. The location of the complex is in the main heart of the city market, which is commercially viable area. As per Assessing Officer, this construction was for commercial purposes. The

Assessing Officer gave reasonable opportunity of being heard on this issue, which was availed by the assessee. After considering the assessee's reply it has been held that the assessee systematically is planning and constructing of commercial complex and then had been selling it in a planned way like a prudent business mind with a profit motive, would be treated as income from business or profession or income from capital gain as claimed by the assessee. He thoroughly examined concept of business on page Nos. 4 to 7 and held that the assessee had purchased the land not inherited. The construction activity was in planned way and intention of the assessee was clear to make profit by indulging in trade adventure. The building on plot purchased was already there, which was utilized for commercial purposes. The learned Assessing Officer after considering the various facts and circumstances of the case and statement recorded U/s 133A of the Act during the course of survey wherein it was accepted by the assessee that this construction was made to earn the profit. The appellant had accepted the booking of shops, which were shown as a sundry creditors in the books of account of M/s Inter Continental Gems. He has used the fund from one business to another. The assessee's business was trade and adventure in

nature. Accordingly, he held that gross profit of Rs. 28,09,602/- is an income from business and profession.

18.1 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had allowed the appeal by following the decision in assessee's own case for A.Y. 2007-08 in ITA No. 939/JP/2010 order dated 24/6/2011 and allowed the appeal in favour of the assessee.

18.2 Now the Revenue is in appeal before us. Learned D.R. vehemently supported the order of the Assessing Officer and it was argued that the facts of the case shows that the assessee was constructing systematically commercial complex and motive behind the construction was to earn profit, which has been discussed by the Assessing Officer in length in his assessment order.

18.3 At the outset, the learned A.R. Shri Manish Agarwal for the assessee relied upon the decision of the Hon'ble ITAT, Jaipur Bench, Jaipur in assessee's own case for A.Y. 2007-08 and facts of the case are identical, therefore, the order of the learned CIT(A) may please be confirmed.

18.4 We have heard the rival contentions of both the parties and perused the material available on the record. The Coordinate Bench in

assessee's own case for A.Y. 2008-08 being ITA No. 939/JP/2010 order dated 24/6/2011 had decided this issue. The relevant portion of the order is as under:-

"2.12 After considering the factual and legal position, we hold that the profit arising from the sale of shops is to be taxed under the head capital gain because the dominant intention of the assessee at the time of purchase of the property was to hold it as investment. Even after construction of the building, the assessee has kept 50% of the building complex for his own purposes and his own business is being conducted from that premises. The Hon'ble Jurisdictional High Court in the case of Vimal Chand Golecha, 201 ITR 442 has held that land and building are two separate assets. If the land and building have been sold together then sale is to be bifurcated amongst land and building. This is necessary as the capital gain on land is long term while capital gain in respect of building is short term. In the instant case, the assessee has treated the investment in construction or building as cost of improvement. The old building has been demolished. Thus the building which was earlier a capital assets with the assessee stands demolished and therefore, there cannot be any improvement to that building. It is, therefore, held that cost of the building in respect of shops sold is to be taken as cost of acquisition of building and capital gain on building will be determined on the basis of sale of building included in the sale of

shops. We therefore, hold that the profit from the sale of shops during the year will be apportioned between the profit on the sale of land and building. The capital gain arising from sale of land will be long term. The profit on sale of building will be short term because the building was stated for construction from June 2005 and therefore, the period of holding of building will be less than three years for sales made during the year."

After respectfully following the decisions of the Coordinate Bench, we confirm the order of the learned CIT(A) on this ground of revenue's appeal.

18.5 The second ground of appeal is against deleting the addition of Rs. 32,00,000/- made U/s 69B on account of "on money" interest earned on it. The Assessing Officer observed that there was a survey U/s 133A of the Act on 10/9/2008. Statement of the assessee was recorded during the course of survey. In answer to question No. 27, it has been admitted Rs. 32,00,000/- had been received "on money" on sale of shops in F.Y. 2007-08 and total receipts of Rs. 72 lacs including "on money" . He admitted that he will pay the tax on "on money" and surrendered for taxation. He further admitted that this disclosure is besides disclosure made at Rs. 78 lacs for A.Y. 2006-07 on account of "on money" and clarified that "on money" received in F.Y. 2006-07 at Rs. 78 lacs and in F.Y. 2007-08 at Rs. 32 lacs, which has been advanced in marked. During the assessment proceedings, the assessee retracted the

admission made during the course of survey, which was not supported with any evidence. After considering the assessee's reply, it was held that these surrenders were made during the course of survey. There is no retraction in formal way after date of survey. He has not only accepted the "on money" during the statement but also how it has been utilized. Therefore, he made addition of Rs. 32 lacs and interest @ 12% at Rs. 3,84,000/- U/s 69 of the Act.

18.6 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had allowed the appeal by observing that this issue has been decided by the Hon'ble ITAT in assessee's own case for A.Y. 2007-08. Accordingly, she deleted the addition.

18.7 Now the Revenue is in appeal before us. The learned D.R. vehemently supported the order of the Assessing Officer and argued that the survey was conducted on 10/9/2008. The assessee filed the return for A.Y. 2008-09 on 30/9/2008. During this period, there was no retraction from the assessee in form of any written letter either to the Assessing Officer or CIT. There was no duress during the course of survey. He voluntary made the

surrender on account of "on money". Therefore, the order of the Assessing Officer could be confirmed.

18.8 At the outset, the learned AR for the assessee relied upon the decision in assessee's own case for A.Y. 2007-08 in ITA No. 939/JP/2010 where the addition for "on money" at Rs. 19 lacs has been added by the Assessing Officer which has been deleted by the Hon'ble ITAT. Facts and circumstances of the case are identical, therefore, learned CIT(A) was right to delete the addition.

18.9 We have heard the rival contentions of both the parties and perused the material available on the record. The Coordinate Bench in assessee's own case for A.Y. 2007-08 ITA No. 939/JP/2010 order dated 24/6/2011 had decided issue of "on money". The relevant portion of the order is as under:-

"4.7 Hence the information contained in the statement recorded during the course of survey can be used but it cannot be conclusive evidence against the assessee. The A.O. has not collected any material from the purchaser of the shops to show that the assessee has received on money. The sale of shop is evidenced by the sale deed. There is no documentary evidence in respect of sale price of the shops. The Hon'ble Punjab & Haryana High Court in the case of Paramjit Singh Vs. ITO, 323 ITR 588

had an occasion to consider as to whether the oral evidence is admissible once the document contains all the terms and conditions. Hon'ble High Court held that according to the provisions of the Indian Evidence Act, 1872 when terms of a contract, grant or other disposition of property have been reduced to the form of a document then no evidence is permissible to be given in proof of any such term or such grant or disposition of the property except the document itself and no oral agreement contradicting/varying the terms of a document could be offered. Once the assessee contended before the A.O. during the course of assessment proceedings that he has not received on money then the A.O. should have collected evidence to hold that assessee has received on money."

After respectfully following the decisions of the Coordinate Bench, we confirm the order of the learned CIT(A) on this ground of revenue's appeal.

18.10 The third ground of the Revenue's appeal is against reducing the trading addition of Rs. 4,73,814/- to Rs. 77,800/- made on account of 25% on unverifiable purchases. In this case, the total unverifiable purchase as mentioned above at Rs. 18,95,259/-. The learned Assessing Officer rejected the books result U/s 145(3) of the Act by quoting various reasons as discussed above. He reproduced statement of Shri Khushi Kumar America, who is Director of Clarity Gold Pvt. Ltd and M/s Marine Mineral & Herbal

Remedies Pvt. Ltd.. Whose statement was recorded on 21/5/2009 during the course of search and seizure operation carried out by the Investigation Wing of Income Tax Department, who categorically admitted that they issued bills only and no goods were supplied. In case of Century Gems on given address, no such firm was found, which can also not be produced by the assessee for verification to the Assessing Officer. After considering the various replies, the learned Assessing Officer rejected the book result of the assessee by considering the various case laws and estimated 25% net profit on unverifiable purchase of Rs. 18,95,259/-.

18.11 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who has allowed the appeal partly by observing that facts of the cases of M/s Sanjay Oil Cake Industries and Vijay Protein (supra) are not applicable to the fact of the case of the assessee. Since the Assessing Officer has not brought anything on record to show that the purchase bill was inflated by 25%. The assessee has shown G.P. @ 13.79%, which was declined from 14.25% in preceding year. Thus, she estimated the income on unverifiable purchases @ 14.5% on declared total turnover and resulting in a trading addition of Rs. 77,800/-.

18.12 Now the Revenue is in appeal before us. The learned CIT DR's arguments already summarized in preceding paras on unverifiable purchases. It is further argued that in assessee's case, the parties, who had supplied the bills, had been searched and statement U/s 132(4) of the Act had been recorded, who had categorically admitted that these are the only bills, no goods were supplied by the suppliers. Therefore, Assessing Officer's order should be confirmed.

18.13 Learned A.R. Shri Manish Agarwal for the assessee argued that during the course of assessment proceedings , every possible details were submitted to the Assessing Officer in form of copy of purchase bills, TIN number, P.A. number, proof of payment and confirmation from the supplier and payments were made through account payee cheques. The assessee has discharged his burden by submitting these evidences during the course of assessment proceedings. It is further argued that the assessment U/s 153A of the Act in case of Clarity Gold Pvt. Ltd. has been completed without disturbing sale of the party. Without purchase no sales could be made by the assessee. In case of Century gems, summon issued by the learned Assessing Officer was served on the assessee. Merely for the reason that the party has not complied with the summon, it cannot be held that the supplier as non-

existent. He further relied various decisions in his submission and argued that case laws relied by the learned Assessing Officer are not squarely applicable in case of the assessee. Accordingly he prayed to confirm the order of the learned CIT(A).

18.14 We have heard the rival contentions of both the parties, perused the material available on the record and above discussion made in this order, it is evident that during the course of investigation made by the department, number of parties were not found in existence on given addresses. No goods, cash, even books of account were found during the course of survey at the business premises of Ashish Jewellers by BCTT wing of the IT Department. The summons/notices were issued by the Assessing Officer, which were returned unserved. Even the assessee could not produce these parties for verification before the Assessing Officer, therefore, it is undisputed fact that these parties had provided only accommodation bills, no goods were supplied by them. As discussed above, it is rampant practice in the gems and jewellery trading to arrange the accommodation bills to reduce the profit. The learned AO had disallowed 25% from the unverifiable purchases which have been deleted by the learned CIT(A) on the basis of G.P. but fact is that the transactions made with two parties are unverifiable. If these purchases

reduced from the total purchases of the assessee, the profit of the assessee automatically increased to that extent. When there is no genuine purchase from these parties to that extent, closing stock also unreliable as no goods have been received from these parties. In this case, cheques were issued but there is no evidence with the revenue that cash has been returned back to the assessee. Therefore, looking at the entirety of facts, we feel reasonable disallowance on these unverifiable purchases @ 15%. Accordingly we reverse the order of the learned CIT(A).

18.15 In the result, Revenue's appeal is partly allowed.

(12) **Shri Rajendra Kumar Agarwal I.T.A. No. 1127/JP/2011 A.Y. 2007-08**

19. This is an appeal filed by the assessee against the order dated 18/10/2011 passed by the learned CIT(A)-II, Jaipur for A.Y. 2007-08. The effective grounds of appeal are as under:-

"1. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in justifying the action of the learned A.O. in not providing opportunity of cross examination of the persons whose statements have been used against the assessee and has further erred in justifying the action of the learned A.O. in not making the evidences which have been used against the assessee. Therefore, the action of the learned CIT(A) is illegal,*

unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire assessment order which is passed in gross violation of principles of natural justice.

2. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of the learned A.O. in holding the purchases from the following parties as bogus:-*

<i>Sl. No.</i>	<i>Name of the parties from whom purchases made</i>	<i>Amount (in Rs.)</i>
1.	M/s Imperial Jewels	6,39,475/-
2.	M/s Govindam Gems	3,11,650/-
	<i>Total</i>	<i>9,51,125/-</i>

The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by holding the above purchases as genuine.

3. *In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the action of the learned A.O. in rejecting the books of account of the assessee by invoking the provisions of Section 145(3) and thereafter making a trading addition of Rs. 2,37,781/-. The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the rejection of books and deleting the trading addition of Rs. 2,37,781/-.*
4. *In the facts and circumstances of the case and in law the learned CIT(A) has erred in confirming the action of the learned A.O. in making following disallowances.*

<i>Particulars</i>	<i>Disallowed (Rs.)</i>
<i>Travelling Expenses</i>	<i>1,32,950/-</i>
<i>Telephone Expenses</i>	<i>2,913/-</i>
<i>Car Running, Insurance, Depreciation Expenses</i>	<i>1,966/-</i>
<i>Electricity Expenses</i>	<i>14,205/-</i>
<i>Total</i>	<i>Rs. 1,52,034/-</i>

The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the above disallowance of Rs. 1,52,034/-.

5. *The appellant craves his rights to add, amend or alter any of the grounds on or before the hearing."*

19.1 Ground No. 1 of the assessee's appeal is against violation of principles of natural justice, which has not been pressed by the learned A.R., therefore, the same is dismissed.

19.2 Ground No. 3 of the assessee's appeal is against invoking the provisions U/s 145(3) of the Act, which is also not pressed by the A.R., therefore, the same is also dismissed.

19.3 Ground No. 2 of the assessee's appeal is against confirming the addition on account of unverifiable purchases of Rs. 9,51,125/-. The assessee is engaged in the business of trading of precious and semi precious stones in the name and style of M/s Unique Palace. The Assessing Officer observed that in the year 2003, there was a search carried out by the department in the

case of Sanjiv Prakashan group and on 20/4/2007 in case of Haldia Group. It was admitted that to regularise the purchases made in cash, the assessee had to obtain bogus bills from different parties. The bills were made to the parties, who provided bill were shown through account payee cheque but immediately whole amount was received back in cash. The parties were provided bills only without actual delivery of goods. Survey by BCTT wing of the department was also conducted in the year 2007-08 and found that various persons were indulged in practice of issuing bogus bills in the trade of gems and jewellery. The learned Assessing Officer further observed that he compared the G.P. rate from A.Y. 2005-06, 2006-07 to the year under consideration. He found that the assessee made purchases from following parties at Rs. 9,51,125/-

Sl. No.	Name of the parties from whom purchases made	Amount (in Rs.)
1.	M/s Imperial Jewels	6,39,475/-
2.	M/s Govindam Gems	3,11,650/-
	Total	9,51,125/-

To verify the purchases made from M/s Imperial Jewels and M/s Govindam Gems, the enquiry was conducted through ward Inspector, who has reported to the Assessing Officer that on give address no such party was found. There was no sign board of any such party there. He also enquired from the local

people about the whereabouts of these parties, which was come in the knowledge of the Inspector that no such parties were there. The summons issued U/s 131 of the Act were also not served on it. Further summon U/s 131 of the Act were also sent through registered post, which were returned back as there were no such party there. The Assessing Officer also requested to the assessee to produce these parties to verify the purchases. The assessee replied vide letter dated 18/11/2009 and claimed that there is no control over these parties. As claimed by the assessee, he made best efforts to produce these parties before the Assessing Officer. He further requested to the Assessing Officer to enforce the attendance of these parties by using his power. He filed photo copy of the purchased bills. The payments were made through account payee cheques maintained with HSBC bank. The photo copy of the bank account was also filed to demonstrate the cheque cleared from the bank account. These purchases had been duly recorded in the books of account and also filed the copy of the stock register maintained by the assessee before him. He also filed copy of export bill and details of the export proceed realized by the assessee. After considering the assessee's reply, the learned Assessing Officer concluded that both the parties were not in existence at given addresses and the assessee despite being provided

sufficient opportunities, failed to produce these parties. The assessee again gave show cause notice on the basis of unverifiable purchases as to why book result should not be rejected U/s 145(3) of the Act. No reply was filed by the assessee. The assessee could not correlated purchase with the sale before the Assessing Officer as per ordersheet entry dated 04/12/2009. He further held that as per Part-D of Chapter IV of the Income Tax Act, these unverifiable purchases cannot be allowed U/s 28 to 44DB of the Act for computing the income from business and profession. The assessee purchased goods and he has primary knowledge about the whereabouts of the parties and onus on him to prove the purchases genuine, for which it required to lead the evidence. He held that the filing copy of details of purchases, sales tax number, PAN number, payments through account payee cheques are not enough to prove the genuineness of the transactions. These concerns were found to him, who had indulged in issuing bogus bills. He further relied in following case laws:

- (a) CIT Vs. Precision Finance Pvt. Ltd. (supra) for payment made by account payee cheque is not sacrosanct.
- (b) M/s Kanchwala Gems Vs. JCIT (supra) for payment by account payee cheque is not sufficient to establish the genuineness of purchase.

- (c) M/s Indian Woolen Carpet Factory Vs. ITAT (supra) for genuineness of the purchases.
- (d) VISP (P) Ltd. Vs. CIT (supra) for genuineness of purchases.
- (e) Chuhar Mal Vs. CIT (supra) for Evidence Act.
- (f) Golcha Properties Pvt. Ltd. for genuineness of transactions.

On the basis of unverifiable purchases in case of two parties , the learned Assessing Officer rejected the book result U/s 145(3) of the Act and estimated the income U/s 144 of the Act by relying on the decisions of Hon'ble Gujarat High Court in the case of Sanjay Oil Cake Industries (supra) and the decision of Hon'ble ITAT Ahmadabad Bench in the case of Vijay Proteins Ltd. (supra) @ 25% on unverifiable purchases of Rs. 9,51,125/-at Rs. 2,37,781/-.

19.4 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had confirmed the addition by observing that investigation wing of the department had conducted survey on the various entry providers and all the above mentioned supplies were found to be such entries, which were providing accommodation bills without any actual business and physical delivery of goods. After receipt of the cheque, equivalent cash was given back after deducting commission varying between .20% to .25%. The Assessing Officer also issued summons U/s 131 of the Act to the alleged suppliers but these

were returned back unserved by the postal department with remarks that "no such party exists at the given address". The Assessing Officer also directed the assessee to produce these parties, but the assessee expressed its inability to produce them. He further relied on the decision of Hon'ble ITAT Jaipur Bench in the case of Deepak Dalela where the Hon'ble Bench had confirmed the addition made by the Assessing Officer. After considering the ITAT Jaipur Bench's decision in the case of Shanti Kumar Chordia Vs. ACIT (2010) 128 TTJ (JP) 708, which has been recalled by the Hon'ble ITAT. The learned CIT again relied upon the case laws referred by the Assessing Officer particularly decision in the case of Kanchwala Gems where Hon'ble ITAT had confirmed the G.P. rate of 30% whereas the Assessing Officer applied 40% G.P. rate. He further relied on the decision in the case of CIT Vs. Sindhuja Foods (P) Ltd. (supra), ACIT Vs. Amar Mining Co. (supra), Mittal Belting and Machinery Stores Vs. CIT (253 ITR 341), Balaji textiles Industries Pvt. Ltd. Vs. ITO 49 ITD 177 (Mum Trib), ITO Vs. Sunsteel (92 TTJ 1126) (A.bad Trib), Uniword Telecom Ltd. Vs. Addl.CIT (45 DTR 433) and confirmed the addition of Rs. 9,51,125/-.

19.5 Now the assessee is in appeal before us. The learned A.R. Shri Rajiv Sogani for the assessee submitted that detailed submissions were made

before the learned CIT(A) for rejection of books of account. The learned CIT(A) relied upon in confirming the trading addition in case of Deepak Dalela, which has been recalled by the Hon'ble ITAT. Thus, it is not relevant to the proceeding. He further relied upon the decision in the case of Amrapali Jewellers (supra) wherein Hon'ble Rajasthan High Court as confirmed the findings of the Hon'ble ITAT and held that on the basis of unverifiable purchases, rejection of book result is justified and also net profit should be estimated on the basis of past history of the case. In case of Swarnaganga Jewellers Vs. ACIT ITA No. 833/JP/2011, the Hon'ble ITAT had followed the decision in the case of Amrapali Jewellers Pvt. Ltd. In following cases, the Hon'ble ITAT disallowed a suitable percentage of net profit on the basis of past history example P.R. Gems Vs. ITO in ITA No. 514/JP/2011 and M/s Amrapali Jewellers (supra). It is further argued that G.P. rate declined had been explained before the Assessing Officer, which was due to increase in the sale, substantially which was due to change of strategy adopted by the assessee. Therefore, he prayed to delete the addition.

19.6 The learned CIT D.R. reiterated the arguments made in introductory para of this case and submitted that the facts of this case also identical with other cases of unverifiable purchases as during the course of

search and survey operation conducted by the department on various parties, which has been referred by the Assessing Officer in the assessment order that these parties had provided only bills, no delivery of goods were made. The Assessing Officer had given sufficient opportunities to the assessee to produce these parties for verification, which has not been produced by the assessee. He only filed confirmation, PAN and TIN number, which cannot be verified in absence of suppliers. The learned Assessing Officer reasonably disallowed on account of unverifiable purchases by following the Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench decision in the case of Vijay Proteins (supra), therefore, he prayed to confirm the order of the learned CIT(A).

19.7 We have heard the rival contentions of both the parties and perused the material available on the record. The assessee has not challenged the rejection of book result as defects pointed out by the Assessing Officer are sufficient to reject the book result U/s 145(3) of the Act. The department had conducted survey and search in various cases as mentioned by the Assessing Officer as well as the learned CIT(A). On investigation, it is found that two parties were also indulged in providing accommodation bills. The sufficient opportunities have been given by the

Assessing Officer to prove the genuineness of the purchases. The Assessing Officer himself issued the notices to these parties but either notices were not served or returned back with remark "no such party is on given address" then ward Inspector had not found these parties. The assessee could not produce these parties for verification during the course of assessment proceedings. Even the Assessing Officer provides reasonable opportunity of being heard to the assessee. Further the learned Assessing Officer had not precluded by the law if the assessee even exported the goods 100% to investigate the unverifiable purchases. The learned Assessing Officer sent notices to these parties which were returned back unserved with remark "party is not existent". The assessee was also produced these parties for verification whatever evidences were produced by the assessee are not sufficient to prove the purchase genuine even payments through account payee cheques is not sacrosanct and had not discharged on him. During the course of investigation conducted by the department, these parties were figured in the list of entry provider and they had admitted that they only provided bills, no real business with delivery of goods. The learned Assessing Officer applied Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench decision in the case of Vijay Proteins

where 25% disallowance held reasonable on unverifiable purchases. The A.R. of the assessee tried to distinguish this case with facts and circumstances and argued to apply past history of the case. The assessee also could not be able to lead any evidence in furtherance of filing of confirmatory letter or merely showing that the payments were made by account payee cheques. The assessee was aware of the whereabouts of the parties and he should have produced these parties before the Assessing Officer for verification of purchases, which could not be done at the stage of assessment proceedings. It has been established that these parties were providing accommodation bills, no goods were supplied by them. The assessee only produced confirmation, PAN and TIN number and claimed that payments were made through account payee cheques whereas in investigation, the cash has been withdrawn from the sellers from the immediately after clearance of the cheques in cash. This finding is also got support from the recent decision of Hon'ble Rajasthan High Court in the case of Venus Arts & Gems order dated 20/8/2014 wherein it has been held that order passed by the ITAT for confirming G.P. after rejection of books of accounts on the basis of various discrepancies found by the Assessing Officer. The Hon'ble court's viewed, there is no question of law. Even the assessee may be 100% exporter which

does not preclude the Assessing Officer from enquiring into the genuineness of the purchases. Therefore, we have considered view that 15% N.P. on unverifiable purchases is reasonable. Accordingly, the assessee's appeal is partly allowed.

19.8 Ground No. 4 of the assessee's appeal is against confirming the addition out of various expenses claimed by the assessee at Rs. 1,52,034/-. The Assessing Officer found that the assessee had claimed under the head travelling expenses at Rs. 2,65,899/-, telephone expenses at Rs. 29,132/-, car expenses at Rs. 61,537/- and electricity expenses at Rs. 14,205/-, which was not supported with evidence as well as the personal use/non-business purposes was also found. He made addition of Rs. 1,52,034/- in total. In appeal, the learned CIT(A) restricted the addition from 20% to 10% on car running expenses at Rs. 1,966/-, telephone expenses at Rs. 2,913/- and confirmed the total disallowance made by the Assessing Officer on account of foreign travelling at Rs. 1,32,950/- on the ground that the assessee had not established the link between the tour conducted and export order received after relying on various decisions. Disallowance under the head electricity expenses at Rs. 14,205/- also confirmed in absence of any evidence whether

these expenses were incurred for office premises or not. The mode of payment is also not clear.

19.9 Now the assessee is in appeal before us. The learned A.R. for the assessee submitted that the appellant is exporter of gems stones. For the purpose of export business, he requires foreign visit. During the year, he incurred Rs. 2,65,899/- for travelling expenses. The Assessing Officer disallowed the expenditure to the extent of 50% for the alleged reasons for personal element. The learned CIT(A) also confirmed the same. He drawn our attention for disallowance made in A.Y. 2004-05 @ 10% under the head travelling expenses and out of other expenses also 10%, therefore, a reasonable disallowance can be made from the above expenses. The learned CIT DR supported the order of the learned CIT(A).

19.10 After considering the facts and circumstances of the case, the disallowance under the various head confirmed by the learned CIT(A) is reasonable, which is only 10% but travelling expenses confirmed on the basis of, there is no business expediency shown by the assessee before the learned CIT(A). Before us also, the learned A.R. had not brought any evidence to justify the foreign travelling for business purposes. The findings given by the learned CIT(A) has not been controverted by the assessee. As during the

year, the total turnover was Rs. 12,14,550/- as compared to preceding year. The assessee's sale has gone down substantially from Rs. 2.88 crores to 12 lacs. In absence of any evidence, foreign travelling expenses cannot be allowed. Therefore, we confirm the order of the learned CIT(A) for disallowance made on travelling expenses. This ground of appeal is dismissed.

19.11 In the result, the appeal of the assessee is partly allowed.

(13) **Smt. Sharmila Jain ITA No. 871/JP/2011 for A.Y. 2007-08**

20. This is an appeal filed by the assessee against the order dated 11/07/2011 passed by the learned CIT(A)-II, Jaipur for A.Y. 2007-08. The effective grounds of appeal are as under:-

- "1. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of the learned A.O. in not providing opportunity of cross examination of the persons whose statements have been used against the assessee. The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire assessment order which is passed in gross violation of principles of natural justice.*
2. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of the learned A.O. in rejecting the books of accounts of the assessee by invoking the provisions of Section 145(3) and thereafter making a*

trading addition of Rs. 6,64,112/-. The action of the learned CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the rejection of books and deleting the trading addition of Rs. 6,64,112/-.

3. *The assessee craves her right to add, amend or alter any of the grounds on or before the hearing.*

20.1 Ground No. 1 of the assessee's appeal is not pressed, therefore, we dismiss the same as not pressed.

20.2 The second ground of assessee's appeal is against rejecting the book result U/s 145(3) of the Act and thereafter making trading addition of Rs. 6,64,112/-. The Assessing Officer observed that the assessee was dealing in manufacturing of gold and silver jewellery and handicrafts items. The assessee was running her business in the name and style of M/s Silver Inn.. During the year under consideration, the assessee had shown total sales of Rs. 2,40,47,857/- and gross profit of Rs. 14,05,762/- giving G.P. rate of 5.84%, which was in immediate preceding sale at Rs. 81,90,583/- and shown gross profit of Rs. 4,61,331/- giving gross profit rate of Rs. 5.63%. During the year under consideration, the assessee had made total purchase of Rs. 2,23,52,969/-. The learned Assessing Officer was asked the assessee to furnish the confirmation of purchases. Simultaneously, letter U/s 133(6) were also issued to the following parties.

1. M/s Shubham Gems
2. M/s Lotus Impex.
3. M/s Ashish Jewellers
4. M/s B.L. Enterprises.
5. M/s Aayush Enterprises.
6. M/s Sumit Gems.
7. M/s Bright Jewells.
8. M/s Anshu Gems.
9. M/s Shree Ganpati Impex.
10. M/s Creative International.
11. M/s Touch Stone.

Letters in case of parties shown in serial No. 2 to 11, which were returned back by the postal authority with the comments that no such person is residing at given addresses. The learned Assessing Officer further observed that department had conducted survey/searches in various cases namely search in Ravi Haldia Group. They have categorically admitted that they provided bogus bills and no goods were purchased from these parties. The BCTT Wing of the department conducted survey U/s 133A and search U/s 132 of the Act in cases of Moti Sons and Sanjiv Prakashan Group, it was found that these parties are indulged in issuing bogus sales bills without actual delivery of goods. From all above parties, enquiries were got conducted but they denied any physical transaction with her. They only provided the bills after getting commission on it. No goods were sold by these parties. He gave

a show cause notice to the assessee on the basis of investigation made by the department and enquiry made by him that book result should not be rejected U/s 145(3) of the Act. The assessee replied vide letter dated 15/12/2009 she filed copy of accounts of 11 parties from her book. The finding given by the postal authorities were also challenged and asked that some of the purchaser parties had confirmed the notice given to them. These parties were registered with sales tax department. Their record can be verified from there. Payments were made through account payee cheques and all the parties were assessed to income tax and filing the income tax return regularly. He also filed confirmation from all relevant parties. The purchases as well as sales had been entered in the books of account. After considering the assessee's reply, the learned Assessing Officer observed that the assessee had not produced the aforesaid parties for verification of purchases made. In eight cases, letters had returned back. Only in three cases, letters were not returned. It is further found that all these parties were covered by the DIT Investigation, Jaipur, in which, enquiries were conducted and found that they issued bogus bills without any physical delivery. The total purchases from these parties were Rs. 26,56,451/-. The assessee was also asked to furnish the quantitative inventory of the closing stock, which has not been furnished by her. Thus,

valuation of closing stock could not be made. The Ward Inspector was also directed to make verification of purchases made from these parties, who has stated that these parties are not in existence at given addresses. These facts were brought to the notice of the A.R. during the course of the assessment proceedings. When the books result was rejected U/s 145(3) of the Act, the Assessing Officer has to estimate the income U/s 144 of the Act. He further relied on the following case laws.

- (i) Shri Kishan Malpani (ITA No. 1045/JP/1997)
- (ii) M/s Kanchwala Gems Vs. JCIT (Supra)

Thereafter he estimated the income @ 25% on unverifiable purchases of Rs. 24,56,451/- by relying upon the decision passed by the Hon'ble Gujarat High Court in the case of Sanjay Oil Cake Industries (supra) and the decision of Hon'ble ITAT Ahmadabad Bench in the case of Vijay Proteins Ltd. (supra) and made the addition of Rs. 6,64,112/- in the income of the assessee.

20.3 Being aggrieved by the order of the learned Assessing Officer, the assessee carried the matter before the learned CIT(A), who had dismissed the appeal and observed that the Investigation Wing of the department had conducted surveys on various entries providers and all the above mentioned suppliers were found to be non-exist entity which were providing

accommodation bills. It was also admitted that no real business was conducted and no physical delivery of goods were ever given. After receipt of cheques, equal cash was given back after deducting commission varying between .20% to .25%. The learned Assessing Officer had issued notice and no such parties were found on given addresses. In case of Suman gems, there was no compliance by the alleged suppliers. The assessee also failed to produce these parties to the Assessing Officer. He further relied upon the decision in the case of Deepak Dalela Vs. ITO (Supra), Shanti Kumar Chordia Vs. ACIT (2010) 128 TTJ (JP) 708. Kanchwala Gems Vs. JCIT (supra), CIT Vs. Sindhuja Foods (P) Ltd. (2008) 16 DTR 278 (Raj.), G.G. diamond International Vs. DCIT (supra), CIT Vs. JMD Computers & Communications (P) Ltd. (2009) 20 DTR 317 (Del.), CIT Vs. Amr Mining Co. (supra), Eland International (P) Ltd. Vs. Dy.CIT (2009) 124 TTJ 554, Mittal Belting and Machinery Stores Vs. CIT (253 ITR 341) (P&H) (HC), Smt. Kusum Lata Thukral (supra), Tirath Ram Gupta Vs. CIT (2008) (204 ITR 145) and finally dismissed the assessee's appeal. It is further held that the assessee had shown outstanding liability of Rs. 11,10,385/- as on 31/3/2007 in respect of these alleged suppliers, which exceeds and the addition made by the Assessing Officer. The stock of the assessee admittedly valued on estimate

basis in audit report. The balances of credit had been shown subject to confirmation. The appellant had failed to prove the genuineness of the purchases made from above 11 parties.

20.4 Now the assessee is in appeal before us. The learned A.R. Shri Rajiv Sogani for the assessee has not challenged the rejection of books of account U/s 145(3) of the Act. He reiterated the arguments made before the learned CIT(A), which has been reproduced by him at pages 4 to 6 of its order. It is argued that decision in the case of Deepak Dalela Vs. ITO cited by the learned CIT(A) has been recalled by the Hon'ble ITAT, Jaipur Bench, therefore, it does not subsist and is of no relevance. In case of Amrapali Jewels Pvt. Ltd. (supra), the Hon'ble Rajasthan High Court has held that profit estimation should be based on appropriate application of G.P. rate taking into consideration the past history of the case. Similar view was also upheld by the ITAT Jaipur Bench in the case of Swarna Ganga Jewellers Vs. ACIT, the Hon'ble ITAT also suitably modified G.P. rate on account of unverifiable purchases in case of P.R. Gems Vs. ITO (supra), Ravi Kumar Rawat Vs. Addl. CIT, ITA No. 511/JP/2011 and M/s Amrapali Jewels (supra). The assessee's G.P. rate is better than immediate preceding year. There is significant increase in turnover. He further relied on the decision of the Hon'ble

Jurisdictional High court in the case of Gotan Lime Khanij Udyog (supra) wherein the Hon'ble Court has taken the view that no trading addition is justified if declared results are better. Thus, the learned A.R. for the assessee prayed to delete the addition of Rs. 6,64,112/- confirmed by the learned CIT(A).

20.5 At the outset, the learned CIT D.R. again reiterated the arguments raised in introductory paragraphs in cases of gems and jewellery that in course of survey and search conducted by the department, it was found that these parties were involved in providing accommodation bills without delivery of goods on which they were getting commission. Particularly in assessee's case, notices were issued which were not served on some of the parties and where it had not returned back, the parties had not been complied with it. The assessee was asked to produce these parties for verification of purchases, which could not be complied by her. The assessee could not provide the quantitative and qualitative details of jewellery with respect to opening purchases, sales and closing stock, therefore, closing stock thus was not subject to verification. All arguments of this case, also to be considered as written reply submitted for these cases and also prayed to

confirm the addition made by the Assessing Officer and confirmed by the learned CIT(A).

20.6 We have heard the rival contentions of both the parties and perused the material available on the record. The assessee has not challenged the rejection of book result as defects pointed out by the Assessing Officer are sufficient to reject the book result U/s 145(3) of the Act. The department had conducted survey and search in various cases as mentioned by the Assessing Officer as well as the learned CIT(A). On investigation, it is found that these 11 parties were also indulged in providing accommodation bills. The sufficient opportunities have been given by the Assessing Officer to prove the genuineness of the purchases. The Assessing Officer himself issued the notices to these parties but either notices were not served or not returned back. The assessee could not produce these parties for verification during the course of assessment proceedings. Even the Assessing Officer provides reasonable opportunity of being heard to the assessee. The learned Assessing Officer applied Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench decision in the case of Vijay Proteins where 25% disallowance held reasonable on unverifiable purchases. The A.R. of the assessee tried to

distinguish this case with facts and circumstances and argued to apply past history of the case. The onus is on the assessee to prove these purchases genuine and sufficient purchases from these 11 parties have been claimed to be made by him. The assessee also could not be able to lead any evidence in furtherance of filing of confirmatory letter or merely showing that the payments were made by account payee cheques. The assessee was aware of the whereabouts of the parties and he should have produced these parties before the Assessing Officer for verification of purchases, which could not be done at the stage of assessment proceedings. This finding is also got support from the decision of Hon'ble Rajasthan High Court in the case of Venus Arts & Gems order dated 20/8/2014 wherein it has been held that order passed by the ITAT for confirming G.P. after rejection of books of accounts on the basis of various discrepancies found by the Assessing Officer. In the Hon'ble court's view, there is no question of law. Even the assessee may be 100% exporter which does not preclude the Assessing Officer from enquiring into the genuineness of the purchases. Therefore, we have considered view that 15% N.P. on unverifiable purchases is genuine in this case. Accordingly, the assessee's appeal is partly allowed.

20.7 In the result, the assessee's appeal is partly allowed.

(14) **M/s Silvex Images I.T.A. No. 1030/JP/2011 A.Y. 2007-08**

21. This is an appeal filed by the assessee against the order of the learned CIT(A)-1, Jaipur dated 11-10-12011 for the assessment year 2007-08.

21.1 During the course of hearing the learned AR has not pressed the Ground No 1 Hence, the same is dismissed being not pressed.

21.2 The ground No. 2 and 2.1 raised by the assessee are as under:-

2.1 On the facts and in the circumstances of the case the Id. CIT(A) has grossly erred in not accepting the purchases of Rs.16,17,011/- as genuine and thereby sustaining an addition of Rs,.2,50,836/- arbitrarily.

2.2 On the facts and in the circumstances of the case the Id. CIT(A) has further erred in sustaining an addition of Rs.2,50,836/- by applying g.p. rate of 8.3% instead of 8.15% declared by the assessee. Hence, the addition so upheld deserves to be deleted."

21.3 The brief facts of the case are that the AO observed that the assessee company is engaged in the business of manufacturing and export of silver, precious and semi precious ornaments and also capital gain on sale of immovable properties. The assessee has shown total sales of Rs.1672.24 lacs and gross profit of Rs.136.94 lacs has been declared by giving a g.p. rate of 8.15%. In the immediately preceding year, the assessee has shown total

sales of Rs.1794.35 lacs and gross profit of Rs. 148.26 lacs by giving a g.p. rate of 8.48%. Thus the g.p. rate of the assessee has been declined as compared to immediately preceding year. The AO further observed that the assessee has shown closing stock valued at cost as certified by the partners. Thus the auditor has not given the required quantitative tally. The same had not been filed during the course of assessment proceedings. Therefore, it is an undisputed fact that the assessee is not maintaining any details of stock. The assessee had declared the closing stock of Rs.1,11,77,912/-. In audit report, the method of valuation of closing stock had been shown 'At cost' but in column 28 of the audit report, there was no details of quantitative tally of the items manufactured or traded. During the course of assessment proceedings, the assessee had not submitted the quantitative and qualitative details of the closing stock. The AO concluded that the closing stock had been shown by the assessee on estimate basis which is not subject to verification. He further found that the assessee has shown total purchases of Rs.82,29,768/- during the year under consideration. On examination of the purchase details, the AO found that the assessee has shown purchases from the following parties.

Sl.No.	Name	Amount
1.	M/s. Unique Jewellery Palace	8,90,970
2.	M/s. Shipra	1,44,841
3.	M/s. Samridhi Jewellers	1,45,200
4.	M/s. Ridhi Sidhi Gems & Jewells	2,40,000
5.	M/s. R.H. Jewellers	1,96,000
	Total	16,17,011

It has been held that the Department had investigated the above said parties in respect of banking cash transaction tax and it was found that no such concern exists on the given addressees. The above parties were only giving accommodation entries and not doing any genuine purchase and sale of gems and jewellery. These facts were intimated to the assessee and the assessee was asked to produce the above parties alongwith the books of accounts to prove the genuineness of the transactions. The assessee submitted before the AO that the assessee had made the purchases from these parties and submitted details thereof. The assessee submitted that the above said parties were duly recorded in the books of accounts and the payments had been made by account payee cheque. Further confirmation of copy of account alongiwth purchase bills were enclosed with the submissions. The assessee could not produce these parties for verification of the purchases made. The AO concluded that these purchases cannot be allowed in Part 'D' of Chapter IV of the Income Tax Act, 1961. The genuineness of these transactions had

not been proved. Thus the expenses were not incurred wholly and exclusively for the purpose of business u/s 37 of the Act. The AO relied on the following case laws in his assessment order.

1. M/s Indian Woolen Carpet Factory vs ITAT and Others (2002) 178 CTR 420 (Raj.) regarding genuineness of the purchases.
2. CIT Vs Precision Finance (P)Ltd. 208 ITR 465 (Cal.) regarding payment of cheque which is not sacrosanct.
3. CIT Vs Golcha Properties Pvt. Ltd. 227 ITR 391 (Raj.). The Department is not required to lead a clinching evidence to prove that purchases are bogus.
4. CIT vs La Medica, 250 ITR 575 (Del.) regarding non-existent of seller.
5. Beena Metals vs CIT, 240 ITR 222 (Ker) regarding bonus purchases.
6. Chaturbhuj Panauj AIR , 1969 (SC) 25, Sumati Dayal vs CIT, 214 ITR 10 (SC) and C. Vasant Lal & Co. 45 ITR 206 (SC) regarding pre-ponderance of probabilities
7. Kanchwala Gems vs JCIT (ITA No.134/JP/02 dated 10-12-2003) regarding payment by cheque is not sufficient to establish the genuineness of the purchasers.

The AO on the basis of the above observations rejected the book result of the assessee u/s 145(3) of the Act which has not been pressed by the assessee. When the book results were rejected u/s 145(3) of the Act, the AO has assessed the income of the assessee u/s 144 of the Act. In this case, the total unverifiable purchases of Rs. 16,17,011/- was detected by the AO and he

applied the decision of Hon'ble Gujarat High Court in the case of Sanjay Oilcake Industries v/s CIT (2008) 10 DTR 153 and ITAT Ahmedabad decision in the case of Vijay Proteins Ltd vs ACIT, 58ITD 428 and estimated the income @ 25% on unverifiable purchases of the assessee at Rs.4,04,253/-.

21.4 Being aggrieved by the order of the AO, the assessee carried the matter before the Id. CIT(A) who allowed the appeal partially by observing that ITAT, Jaipur Bench has consistently held that where the purchases were made by the assessee from parties that were covered under the survey operations conducted by the BCTT Wing of the Department, the genuineness of purchases was unverifiable and this was not a serious defect in computing the income of the assessee and was a legitimate ground for rejecting the books of accounts of the assessee u/s 145(3) of the Act. Thus the Id CIT(A) upheld the rejection of books of accounts of the assessee. Regarding estimation of income, the Id. CIT(A) followed the ITAT, Jaipur Bench decision wherein the past history of the case is the best guide for estimation of g.p. rate. The Id. CIT(A) further found that the case of Sanjay Oilcake Industries (supra) is not applicable to the facts in the case of the assessee because nowhere the AO has brought on record that the bills of purchases were inflated by 25% from these five parties. Pursuant to consistent decision taken

by this Bench of ITAT in the case of unverifiable purchases, the past history of the assessee is taken to be the basis to estimate the income of the assessee. The assessee has declared the g.p. rate of 8.48% on total turnover of Rs.1749.34 lacs whereas for this assessment year the assessee has shown g.p. rate of 8.15% on decreased turnover of Rs.1672.24 lacs. Thus the Id. CIT(A) applied the g.p. rate of 8.3% on declared turnover of Rs.1672.24 lacs and confirmed the addition of Rs. 2,50,836/-.

21.5 The assessee being aggrieved by the order of the Id CIT(A) is before us.

21.6 During the course of hearing, the Id. AR submitted that the addition of Rs.250,836/- confirmed by the Id. CIT(A) out of total addition of Rs. 4,04,253/- made by the AO was by applying 36% rate on alleged unverifiable purchases of Rs.16,17,011/- .The Id. CIT(A) applied the g.p. rate of 8.3% as against the g.p. rate of 8.15% declared by the assessee. He further submitted that in Assessment Year 2005-06, ITAT confirmed the lumpsum addition of Rs. 70,000/- on account of g.p. addition. In assessment year 2006-07, the case was not scrutinized u/s 143(1) of the Act. He further argued that the alleged unverifiable purchases are 1.27% of total purchases

of Rs.12.70 crores. He further relied on the decision of ITAT Calcutta Bench in the case of Sagar Bose vs ITO 56 ITD 561. The assessee furnished the copy of Purchase Bills, RST/CST No. of suppliers, PAN, Proof of payment made against purchases through account payee cheque and confirmation from the above suppliers during the course of assessment proceedings. The AO totally relied on the information collected and supplied by the Investigation Wing. The AO has ignored the evidence and details filed by the assessee to prove the genuineness of purchases. The AO had not found any defect in it. The AO has not made any effort to compare the inventory content price with the price charged by other suppliers. The AO has not conducted any enquiry from the Sales Tax Department to verify the existence of the suppliers. The onus in relation to purchases is not as is casted on assessee u/s 68 of the Act. The bank statements of the alleged suppliers were available to the AO. The AR submitted that without having any material or evidence in possession, the AO has not only doubted the all plausible evidence filed in the shape of confirmation, PAN, TIN etc but also held the suppliers non-existent. The AO had also not brought on record that bills of purchases were inflated by 25% from these parties. The AR submitted that the Id. CIT(A) also applied the g.p. rate of 8.3% without any basis on mere assumption and presumption. He

further relied on the case of CIT vs Inani Marbles Pvt. Ltd. 316 ITR 125 (Raj.) and requested to delete the addition confirmed by the Id. CIT(A).

21.7 The Id. DR vehemently supported the order of the AO and argued that in past the assessee's g.p. rate is doctored as unverifiable purchases were found in A.Y. 2005-06 in the case of the assessee. The AO had asked the assessee to produce these parties for verification but the same had not been produced. The assessee has directed the AO as to how investigate the case and collect the evidence in favour of the assessee for not making any addition. The Investigation Wing as well as BCTT Survey had established that these parties are providing accommodation entries only. There is no purchase and sale of goods. Whatever the evidence produced by the assessee before the Assessing Officer prove that the assessee had not discharged the onus. The assessee tried to shift it on the Revenue. Therefore, the Id.DR requested to confirm the order of the Id. CIT(A).

21.8 We have heard both the parties and perused the materials available on record. The AO made addition of Rs.4,04,253/- on unverifiable purchases of Rs.16,17,011/- whereas the Id. CIT(A) confirmed the addition of Rs.2,50,836/- on the basis of the past history of the assessee. After

examining of the facts and circumstances of the case, we hold reasonable 15% net profit rate on unverifiable purchases. The learned CIT(A) has confirmed the addition near about 15% on unverifiable purchase. Thus we do not find any reason to interfere in the order of the learned CIT(A), which is confirmed on this issue.

21.9 The third ground of the assessee is pertaining to prior period expenses of Rs.3,70,588/-.

21.10 The brief facts of the case are that the assessee had debited a sum of Rs.2,42,097/- being prior period expenses on account of purchase and Rs.1,28,491/- on account of custom duty paid on purchases. The Id CIT(A) confirmed the additions by observing that these expenses are not allowable in the year under consideration because it did not pertain to this assessment year and such expenses can be allowed to which assessment year they pertain,

21.11 The AR of the assessee submitted that though the expenses are related to prior period yet they were not claimed in any previous assessment year out of the income declared by the assessee firm as they were not crystallized prior to the year under appeal. The purchase bills and Custom

Duty paid bills were dated 9-03-2006 which were cleared by the custom authority during the year under consideration. The goods have been received by the assessee in the year under consideration. The assessee has not claimed double deduction of the same expenses. Therefore, the Id. A.R. requested to delete the addition confirmed by the Id CIT(A).

21.12 At the outset, the Id. DR supported the order of the Id CIT(A).

21.13 After considering the facts of the case as evident from the date of bills of purchases as well as custom duty clearance and goods received, it proves that liability was crystallized during the year. The assessee has not revised the income for the assessment year 2006-07. The genuineness of the expenses has not been doubted by the lower authorities. Therefore, we allow the prior period expenses during the year under consideration.

21.14 In the result, the appeal of the assessee is partly allowed.

Sd/-
(R.P. TOLANI)
JUDICIAL MEMBER

Sd/-
(T.R. MEENA)
ACCOUNTANT MEMBER

Jaipur, Dated : 22nd October, 2014

* Ranjan

Copy forwarded to :-

1. Shri Anuj Kumar Varshney, Jaipur & the I.T.O. Ward 5(4), Jaipur.
2. M/s Bhansali Traders, Jaipur, M/s Lakhi Gems, Jaipur, Shri Ravi Sancheti, Jaipur, M/s H.K. Impex, Jaipur & the I.T.O. Ward 2(1), Jaipur.
3. Shri Deepak Dalela, Jaipur & the ITO, Ward 6(3), Jaipur.
4. Smt. Sharmila Jain, Jaipur, Shri Hemant Srivastava, Jaipur & the I.T.O. Ward 6(1), Jaipur.
5. M/s Jewels Emporium, Jaipur, the CIT-I, Jaipur & the A.C.I.T., Circle-2, Jaipur.
6. M/s Silvex Images, Jaipur & the Addl. CIT, Range-1, Jaipur.
7. Shri Rajendra Kumar Agarwal, Jaipur & the I.T.O. Ward 5(2), Jaipur.
8. Kumud Chand Jain HUF, Jaipur & the I.T.O. Ward 3(2), Jaipur.
9. M/s G.B. Impex, Jaipur & the I.T.O. Ward 6(3), Jaipur.
10. The I.T.O. Ward 1(1), Jaipur & M/s Kinu Baba Jewellery P Ltd., Jaipur.
11. The CIT (A)
12. The CIT
13. The D/R

Guard file (I.T.A. No. 187/JP/2012 & Others)

By Order,

AR ITAT Jaipur.