

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'B': NEW DELHI  
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.673/Del/2015  
Assessment Year : 2009-10**

**M/s Ginni Gold Limited,  
2606/4, Shop No.105,  
1<sup>st</sup> Floor, Solitaire Plaza,  
Gurudwara Raod, Karol Bagh,  
New Delhi-110005  
PAN-AACCG9728Q**

**Vs. Additional Commissioner of Income  
Tax,  
Circle-12(1),  
New Delhi**

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Hiren Mehta, CA  
Respondent by : Sh. Jagdish Singh, Sr. DR

Date of hearing : 09.02.2021  
Date of pronouncement : .04.2021

**ORDER**

**PER R.K. PANDA, AM :**

This appeal filed by the assessee is directed against the order dated 28.11.2014 of the learned CIT(A)-4, New Delhi, relating to Assessment Year-2009-10.

2. Facts of the case, in brief, are that the assessee is a company, engaged in the business of trading in business of bullions and manufacture and trading of silver and gold ornaments. The assessee filed its return of income on 29.09.2009 declaring total income of Rs.65,59,963/-. During the course of assessment proceedings, the assessee produced books of account, which were test check by the Assessing Officer. The Assessing

Officer on the basis of various details filed before him noted that the assessee company has advanced an amount of Rs.2,20,00,000/- to its suppliers M/s Lakshya Overseas for two days. He noted that the nature of the business of the assessee company does not require to lending sums for procuring goods from its suppliers. He, therefore, invoking the provisions of section 36(1)(iii) of the Income Tax Act, 1961 (in short 'the Act') made addition of Rs.14,194/- being interest @12% per annum.

3. He further noted that the assessee has given donation of Rs.13,000/- to two trusts namely Prem Lal Praksh Trust Rs.10,000/- and Udantika Manav Sewa Sansta of Rs.3,000/-. Since, the assessee could not produce any evidence in support of the same, the Assessing Officer disallowed Rs.13,000/- claimed by the assessee on account of donation.

4. The Assessing Officer similarly made addition of Rs.1,05,484/- being filing fees paid to the ROC on the ground that the amount is paid towards increasing its authorized share capital, which is not an allowable expenditure u/s 37(1) of the Act.

5. The Assessing Officer further noted from the stock records of the assessee that the assessee gets the Gold ornaments manufactured on job work basis. For the same purpose, the Gold bars are issued to job work contractors and recorded in issue side of stock register of Gold Bars through stock journal and value is recorded at notional rates. Similarly, upon receipt of manufactured goods from job workers, the goods are recorded in Gold Jewellery item in stock register at notional value.

6. The Assessing Officer found from the stock details that the assessee company had issued gold bars weighing 87000 grams and recorded them at value of Rs. 10,72,03,710/- and paid a sum of Rs.9,17,115/- as job charges in respect of the same (Total Rs. 10,81,20,825/-). Upon receipt of these goods, the same have been recorded in receipt side of the stock register in Gold Jewellery item. However, as per statements submitted during course of proceedings, the amount of Gold Jewellery (manufactured/production) has been recorded at Rs. 10,67,92,970/-. No reason for decrease in value of gold has been given by the assessee in the process of manufacturing the ornaments. Since, the value of closing stock at the end of the year is arrived at with the help of computer at values recorded, the closing stocks of manufactured jewellery thus, is under valued by a sum of Rs. 13,27,855/- and thus, the profits of the company are understated to that extent. Hence, the Assessing Officer made addition of Rs. 13,27,855/- to the total income of the assessee. The Assessing Officer, accordingly determined the total income of the assessee at Rs.80,20,500/-.

7. The assessee approached the learned CIT(A) who sustained the addition of Rs.14,194/- on account of disallowance u/s 36(1)(iii) of the Act, disallowance of Rs.13,000/- on account of donation, disallowance of Rs.1,05,484/- on account of filling fees paid to ROC. So far as, the disallowance of Rs.13,27,855/- on account of valuation closing stock is

concerned, the learned CIT(A) sustained the addition of Rs.6,27,165/- and deleted the balance addition.

8. The learned CIT(A), during the course of appeal proceedings, noted that the assessee company is a trader in Gold Bar, Gold jewellery and Bullions. From the same premise other related concerns also trade in gold:, bullion and gold jewellery. During the course of appellate proceeding, the Learned CIT(A) further observed that the assessee company had entered into frequent transactions of purchase and sale of Gold Bar 995, Gold Bar 999 and finished Gold jewellery with its sister concerns. Several opportunities were extended to the assessee to produce the copy of the ledger account of the sister concerns of the assessee in its books to justify whether such transactions were at arm's length basis. The assessee furnished the following details of purchases with persons specified u/s 40A(2)(b):

Sl. No.	Name of Co.	Amount in Rs.	Designation	Name of person
1	Goel Exim India Pvt. Ltd.	111,243,140	Director	Ashok Goel, Rraveen Gupta
2	Goel Impex	227,423,145	Proprietor	Praveen Gupta
3	Priyansh Gold	30,049,505	Proprietor	Pradeep Goel
4	<u>Royal</u> Gold	12,807,644	Proprietor	Jai Prakash Gupta
5	Bnavya Gold	184,453,619	Partner	Jai Singh Goel, Cheten Gupta
6	Ginni Holdings	58,818,238	Partner	Pradeep Goel, Praveen Gupta
7	L P Overseas	156,913,690	Partner	Jai Prakash Gupta, Sandeep Gupta
8	Shree Balaji Commodities	37,178,972	Partner	Ashok Goel, Reena Goel
9	Shree Ganpati Impex	296,474,012	Partner	Jai singh Goel, Ashok Goel
10	Sparsh Gold	17,029,703	Partner	Ashok Goel, Reena Goel
11	Shree Raj Mahal Jewellers	12,717,000	Partner	Ginni Devi, Pradeep Goel
	<b>G. Total</b>	<b>1,145,108,666</b>		

9. The learned CIT(A) made comparison of the purchase price and sale price of such items from related parties *vis-a-vis* outside parties and noted that the assessee had paid excessive purchase price in respect of the same item as compared to outside parties on the same day or within 1 or two days. Similarly, the transaction of the sales made to sister concern in respect of same item, on the same day or within 1-2 days, which are under valued, as compared with sales made to outside parties. He accordingly issued an enhancement notice to the assessee to explain as to why disallowance in respect of purchases made from related concern u/s 40A(2)(b) should not be made and why demand should not be enhanced.

The relevant extract of the said notice reads as under:-

*"2. During the course of the appellate proceeding your representative was asked to furnish the quantity-wise and value-wise details of purchase, sale of closing stock and stock issued for job work purpose of Gold Bar 995, Gold Bar 999 and gold Jewellery.*

*3. In respect of the details furnished relating to Gold Bar 999, I observe that in respect of purchase of 4500 Gram of gold bar 999 on 1.12.2008 from Bhavya Gold, the purchases were shown at Rs.1245 per gram, whereas from 23.10.2008 till 5.12.2008, the gold bar 999 was sold within the range of 1207.92 (as on 23.10.2008) to Rs.1216 per gram (as on 5.12.2008). I was informed by the id. Counsel that the Bhavya Gold was covered u/s 40A(2)(b). However, in the Tax Audit Report in the item No. 10 related to notes of accounts,, it was reported that there was no related party disclosure.*

*3.2 Further, Gold Bar 999 was purchased @ Rs.1263.50 gram in respect of 5,000 gram Gold Bar 999 purchased on 20.10.2008 from Shree Ganpati Impex, whereas as mentioned above, the prevailing rate used for selling the same item has been within the range of 1207.92 to 1216 per gram. You are required to explain as to whether any of the purchases were made from related parties or any sales were made to related party u/s 40A(2)(b). Also in case of*

*such transaction related to such related party, you are required to explain as to why excessive purchase price may not be disallowed u/s 40A(2)(b). In the similar format, you are required to furnish the details of Gold bar 995 and finished gold jewellery purchased or sold to the related concern with the explanation as to why any amount which is not at arm's length may not be taken towards addition to the total income."*

10. Rejecting the various explanation given by the assessee the learned CIT(A) observed that the assessee being a bullion dealer, all transactions were to be at fair market value and there is no reason as to why most of the purchases made from related concern were at a higher rate than market rate which is taken from the rate of purchases made from unrelated concerns. Further, on many occasions on the same date, sales of some item were made to related concern at a much lower price as compared with the purchase price from other (related or unrelated) concern. Thus, the assessee has inflated purchase price from related concern and sold at lesser price to related concerns to suppress its profit. Since, according to him the assessee could not offer any justification as to why sales were made to related concern operating from the same premise at below the rate at which sales were made to outside parties and purchases made at higher price from related concerns, therefore, he enhanced the assessment to the extent of Rs.3,57,53,276/-.

11. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before us by raising following grounds of appeal:-

1. *On the facts and circumstances of the case and in law the CIT (A) erred in holding that necessary details and explanation as to bullion transactions were not placed before him while the impugned order is replete with such details;*
2. *On the facts and circumstances of the case and in law*

*the CIT (A) erred in rejecting the books of accounts u/s 145 of the Act;*

3. *On the facts and circumstances of the case and in law the CIT(A) erred in making an enhancement of the assessed income by making an addition of Rs.2,19,63,025/- u/s 40A(2)(b) of the Act in respect of purchases made from sister concerns even though the same had been made as per the current gold rate;*

4. *On the facts and circumstances of the case and in law the CIT(A) erred in making an enhancement in respect of allegedly suppressed sale in a sum of Rs.1,37,90,251/- even though the details as to fair market value were admittedly before him.*

5. *On the facts and circumstances of the case and in law the CIT (A) erred in confirming the application of section 36 (l)(iii) of the Act in respect of the sums advanced to these sister concerns;*

6. *On the facts and circumstances of the case and in law the CIT (A) erred in sustaining the disallowance of Rs.13,000/-in respect of donation;*

7. *On the facts and circumstances of the case and in law the CIT (A) erred in sustaining the disallowance on account of valuation of closing stock in a sum of Rs. 13,27,855/-.*

12. The assessee has also taken following additional ground:-

*“That on the facts and circumstances of the case and in law the CIT(A) erred in enhancing the income of the appellant as he did not have jurisdiction u/s 251(1)(a) of the Income Tax Act to enhance income in the form of a new source of income which had not been considered by Assessing Officer and was therefore not subject matter of appeal against the proposition settled by the full bench of Delhi High Court in the case of CIT vs.”*

13. The learned counsel for the assessee submitted that above additional ground is purely a legal ground and does not require verification of new facts. Relying on the decision of the Hon’ble Supreme Court in the case of NTPC vs CIT 229 ITR 383 (SC) and the decision of the Hon’ble Delhi High Court in the case of CIT vs Parabolics Print Pvt. Ltd. 276 ITR 42 (Del.), he submitted that additional ground raised by the assessee should be

admitted for adjudication.

14. After hearing the learned DR and after considering the fact that the additional ground raised by the assessee is purely a legal ground and does not require verification of any new facts, the additional ground raised by the assessee is admitted for adjudication.

15. Ground of appeal no.1 and 2 being general in nature are dismissed.

16. Ground of appeal no. 3 and 4 and the additional ground raised by the assessee relate to the order of the learned CIT(A) in enhancing the income of the assessee u/s 40A(2)(b) of Rs.3,57,53,276/- which comprises of enhancement of Rs.2,19,63,025/- in respect of purchases made from sister concern and an amount of Rs.1,37,90,251/- being enhancement on account of suppressed sale to the sister concern.

17. The learned counsel for the assessee strongly challenged the order of the learned CIT(A) in issuing the enhancement notice on the ground that the First Appellate Authority is not empowered to make enhancement in respect of a new source of income, which is not subject matter of the assessment order and which has not been considered by the Assessing Officer. Referring to the latest decision of the Co-ordinate Bench of the Tribunal in the case of Hari Mohan Sharma vs ACIT reported in 110 Taxmann.com 119 (Delhi ITAT), copy of which is placed at page 57 to 75 of the case law compilation, the learned counsel for the assessee submitted



that the co-ordinate Bench of the Tribunal after considering various decisions including decisions of Hon'ble Supreme Court and various Hon'ble High Courts has held that enhancement u/s 251(1)(a) of the Act is prohibited on the issue which has not at all been considered by the Assessing Officer during the course of assessment proceedings. Therefore, the learned CIT(A) could not have enhanced the income of the assessee on account of altogether a new source of income, since, he is not competent to enhance the assessment taking an income which income was not considered expressly or by necessary implication by the Assessing Officer. He submitted that if such power would have given to the learned CIT(A) then the powers u/s 263 of the CIT or the power of the Assessing Officer u/s 147 will become redundant. He, accordingly, submitted that the learned CIT(A) should not have and could not have enhanced the income of the assessee on altogether a new source of income which has not been considered by the Assessing Officer. The learned counsel for the assessee also placed reliance on the following decisions:-

- i. CIT vs Sardari Lal & Co. 120 Taxman 595 (Del.)(FB)
- ii. CIT vs Union Tyers 107 Taxman 447 (Del)
- iii. CIT vs Shapoorji Pallonji Mistry 44 ITR 891 (SC)
- iv. CIT vs Rai Bahadur Hardutrey Motilal Chamaria 66 ITR 443 (SC)
- v. CIT, Thrissur vs. B.P. Sharafudin 252 Taxman 326 (Ker)
- vi. Bikran Singh vs DCIT 82 Taxmann.com 230(Del.)
- vii. Ram Infrastructure Ltd. Vs JCIT, Jalgaon, ITA No.764/PN/2013

18. The learned DR, on the other hand, heavily relied on the order of the learned CIT(A).

19. We have considered the rival arguments made by both the sides, perused the orders of Assessing Officer and learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the only issue to be decided in the above grounds relates to the order of the learned CIT(A) in enhancing the income of the assessee by Rs.3,57,53,276/-, on an issue which was not considered by the Assessing Officer but was considered by the learned CIT(A) through enhancement notice. It is the submission of the learned counsel for the assessee that the learned CIT(A) is not empowered to make enhancement in respect of a new source of income which is not the subject matter of the assessment order and which has not been considered by the Assessing Officer. A perusal of the assessment order shows that the Assessing Officer has not made any addition on account of purchase from or sales made to the related concerns. Therefore, the question that arises is as to whether the learned CIT(A) is competent to enhance assessment by taking an income which was not considered expressly or by necessary implication by the Assessing Officer during assessment proceedings.

20. We find an identical issue had come up for before Co-ordinate Bench of the Tribunal in the case of Hari Mohan Sharma vs ACIT reported in 179 ITD 310. We find the Tribunal after considering various decisions including the decision of the Hon'ble Supreme Court held that the

Commissioner (Appeals) has exceeded his jurisdiction in enhancing the income of the assessee considering the new source of income not at all considered by the Assessing Officer and accordingly set-aside the order of the learned CIT(A). The relevant observations of the Tribunal from para 14 onwards read as under:-

“

14. Coming to the first issue of challenge to powers of enhancements by the Id CIT (A), Powers of Id CIT (A) are enshrined u/s 251 of the act as under :-

**“251. POWERS OF THE(... )COMMISSIONER (APPEALS).**

*(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers--*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment ;*

*(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment ;*

*(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;*

*(c) in any other case, he may pass such orders in the appeal as he thinks fit.*

*(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

*Explanation In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.”*

15. Honourable Delhi High court in [2012] 348 ITR 170 (Del) GURINDER MOHAN SINGH NINDRAJOG v. COMMISSIONER OF INCOME-TAX has visualized in para no 19 and 20 has laid down the guidance when the powers of the enhancement by the Id CIT (A) are validly invoked. The Honourable High court held that

“19. We have considered the submissions of both the parties. There is no doubt about the fact that while framing the assessment even under section 143(3) of the Act, the Assessing Officer may omit to make certain additions of income or omit to disallow certain claims which are not admissible under the provisions of the Act thereby leading to escapement of income. The Income-tax Act provides for remedial measures which can be taken under these circumstances. While framing an assessment under section 143(3) of the Act, any of the following situations may occur :

(a) the Assessing Officer may accept the return of income without making any addition or disallowance ; or

(b) the assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of order of assessment but he under assessed such sums ; or

(c) he makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income ;

(d) yet, there can be another situation where the Assessing Officer inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry ;

(e) further another situation may arise, where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the Revenue, or

(f) where an item of income which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts necessary for computation of income.

20. To ensure for each of such situations, an income which ought to have been taxed and remained untaxed, the Legislature has provided different remedial measures as are contained in sections 251(1)(a), 263, 154 and 147 of the Act.

21. In the category stated in (a), obviously if an income escapes an assessment, the provisions of section 147 of the Act can be invoked,

subject to the condition stated in the proviso to the said section. In the category of cases falling in category (b), section 251(1)(a) provides the Commissioner of Income-tax (Appeals) could enhance such an assessment qua the under assessed sum, i.e., where the Assessing Officer had dealt with the issue in the assessment and was the subject-matter of appeal. In category falling in (c) and (e), the Commissioner of Income-tax has been empowered to take an appropriate action under section 263 of the Act. In the category of cases falling under clauses (d) and (f), appropriate action under section 147 of the Act can be taken to tax the income which has escaped assessment or had remained to be taxed. There can be situations where an item has been dealt with in the body of the order of assessment and the assessee being aggrieved from the addition or disallowances so made, had preferred an appeal before the Commissioner of Income-tax (Appeals) against the said addition and disallowance, the said disallowance and addition being the subject-matter of appeal before the Commissioner of Income-tax (Appeals) in such cases, the Commissioner of Income-tax (Appeals) has been empowered under section 251(1)(a) of the Act to enhance such an income where the Assessing Officer had proceeded to make addition or disallowance by dealing with the same in the body of order of assessment by under assessing the same as the same was the subject-matter of the appeal as per the grounds of the appeal raised before him. In other words, the Commissioner of Income-tax (Appeals) has a power of enhancement in respect of such item or items of income which has been dealt with in the body of the order of the assessment, and arose for his consideration as per the grounds of appeal raised before him, being the subject-matter of appeal.”

16. On the basis of the above decision following remedial matrix as per the law is as under :-

Sr No	Situation	Remedial Measures under the Income tax Act
a	Assessing Officer may accept the return of income without making any addition or disallowance ; or	U/s 147 of the act subject to limitations contained therein
b	the assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of order of assessment but he under assessed such sums ;	u/s 251 (1) (a) where the Assessing Officer had dealt with the issue in the assessment and was the subject-matter of appeal
c	AO makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income	U/s 263 of the act
d	where the Assessing Officer	u/s 147 of the act

	inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry	
e	where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the Revenue,	U/s 263 of the act
f	where an item of income which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts necessary for computation of income	u/s 147 of the act

17. In the same decision honourable Delhi High court after considering the provision of section 251(1) (a) of the act further held that

“25. In CIT v. Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC) where the Supreme Court interpreted the corresponding provision under the old Income-tax Act, 1922, the legal position was stated as under (page 450) :

"The principle that emerges as a result of the authorities of this court is that the Appellate Assistant Commissioner has no jurisdiction, under section 31(3) of the Act, to assess a source of income which has not been processed by the Income-tax Officer and which is not disclosed either in the returns filed by the assessee or in the assessment order, and, therefore, the Appellate Assistant Commissioner cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under section 31(3) of the Act is restricted to the subject-matter of assessment or the sources of income which have been considered expressly or by clear implication by the Income-tax Officer from the point of view of the taxability of the assessee. It was argued by Mr. Vishwanath Iyer on behalf of the appellant that by applying the principle to the present case, the Appellate Assistant Commissioner had jurisdiction to enhance the quantum of income of the assessee. It was pointed out that the fact of alleged transfer of Rs. 5,85,000 to Forbesganj branch was noted by the Income-tax Officer and also the fact that it did not reach Forbesganj on the same day. So it was argued that in the appeal the Appellate Assistant Commissioner had jurisdiction to deal with the question of the taxability of the amount of Rs. 5,85,000 and to hold that it was taxable as undisclosed profits in the hands of the assessee. We are unable to accept the argument put forward on behalf of the appellant as correct. It is true that the Income-tax Officer has referred to the remittance of Rs. 5,85,000 from the Calcutta branch, but the Income- tax Officer considered the dispatch of this amount only

with a view to test the genuineness of the entries relating to Rs. 4,30,000 in the books of the Forbesganj branch. It is manifest that the Income-tax Officer did not consider the remittance of Rs. 5,85,000 in the process of assessment from the point of view of its taxability. It is also manifest that the Appellate Assistant Commissioner has considered the amount of remittance of Rs. 5,85,000 from a different aspect, namely, the point of view of its taxability. But since the Income-tax Officer has not applied his mind to the question of the taxability or non-taxability of the amount of Rs. 5,85,000 the Appellate Assistant Commissioner had no jurisdiction, in the circumstances of the present case, to enhance the taxable income of the assessee on the basis of this amount of Rs. 5,85,000 or of any portion thereof. As we have already stated, it is not open to the Appellate Assistant Commissioner to travel outside the record, i.e., the return made by the assessee or the assessment order of the Income-tax Officer with a view to find out new sources of income and the power of enhancement under section 31(3) of the Act is restricted to the sources of income which have been the subject-matter of consideration by the Income-tax Officer from the point of view of taxability. In this context 'consideration' does not mean 'incidental' or 'collateral' examination of any matter by the Income-tax Officer in the process of assessment. There must be something in the assessment order to show that the Income-tax Officer applied his mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non taxability and not to any incidental connection. In the present case, it is manifest that the Income-tax Officer has not considered the entry of Rs. 5,85,000 from the points of view of its taxability and, therefore, the Appellate Assistant Commissioner had no jurisdiction in an appeal under section 31 of the Act, to enhance the assessment."

26. To the same effect is the judgment of another Division Bench of this court in CIT v. Union Tyres [1999] 240 ITR 556 (Delhi) reiterating that the first appellate authority cannot consider new scope of income under section 251(1) of the Act. The following question from the same judgment can aptly be (page 559) :

"Section 251 of the Act prescribes the power of the Appellate Assistant Commissioner, now the Commissioner (Appeals). Section 251(1)(a) of the Act empowers the Appellate Assistant Commissioner in disposing of an appeal by the assessee against an order of assessment to confirm, reduce, enhance or annul the assessment or to set aside and refer the case back to the Income-tax Officer for making fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner. The Explanation to section 251 provides that the Appellate Assistant Commissioner may hear and decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding that such a matter was not raised before the Appellate Assistant Commissioner by the appellant.

The issue with regard to the scope of powers of the first appellate authority in disposing of an appeal has come up before the courts umpteen times but we do not propose to burden the judgment by making reference to all the decisions on the point. We will notice a few decisions which we consider are relevant to answer the question referred. In CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC), while construing the corresponding provisions of the Indian Income-tax Act, 1922, relating to the jurisdiction of the Appellate Assistant Commissioner in such an appeal, the Supreme Court held that, in an appeal filed by the assessee, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering a new source of income, not considered by the Income-tax Officer in the order appealed against. Similar views were expressed by the apex court in CIT v. Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC). It was held that the power of enhancement under section 31(3) of the 1922 Act was restricted to the subject-matter of the assessment or the source of income which had been considered expressly or by clear implication by the Income-tax Officer from the point of view of taxability and that the Appellate Assistant Commissioner had no power to assess a source of income which had not been processed by the Assessing Officer."

27. At the same time, the court also clarified that the power of the first appellate authority is not restricted to examine only those aspects of assessment about which the assessee makes a grievance but it covers the whole assessment to correct the order of the Assessing Officer not only with regard to the matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. This principle can be traced to the following discussion in the said judgment (page 561) :

"Thus, the principle emerging from the aforementioned pronouncements of the Supreme Court is, that the first appellate authority is invested with very wide powers under section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. However, there is a solitary but significant limitation to the power of revision, viz., that it is not open to the Appellate Assistant Commissioner to introduce in the assessment a new source of income and the assessment has to be confined to those items of income which were the subject-matter of original assessment."



28. The aforesaid view taken by the Division Bench was confirmed by the Full Bench of this court in CIT v. Sardari Lal and Co. [2001] [251 ITR 864](#) (Delhi) [FB] observing as under (page 871) :

"Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 of the Act and section 263 of the Act, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, the decision in Union Tyres' case [1999] [240 ITR 556](#) (Delhi) of this court expresses the correct view and does not need reconsideration. This reference is accordingly disposed of."

[ underline supplied by us]

18. Further Honourable kerala High court in B P Sherafudin's case [ supra] while examining the powers of CIT (A) u/s 251 (1) (a) of the act on enhancement has examined the whole judicial precedent as under :-

Precedential position :

39. A Full Bench of this court in CIT v. Best Wood Industries and Saw Mills [2011] [331 ITR 63](#) (Ker) [FB] has examined the powers of the Assessing Officer, but not the appellate authority. It has held that once the assessment is reopened for any valid reason recorded under section 148(2), then the entire assessment is open for the Assessing Officer to bring to tax any item of escaped income which comes to his notice in such reassessment.

40. Under the old Income-tax Act, the corresponding provision is section 31. Interpreting that provision, the Supreme Court in CIT v. Kanpur Coal Syndicate [1964] [53 ITR 225](#) (SC) has held that under section 31(3)(a), in disposing of an appeal, the appellate authority may confirm, reduce, enhance or annul the assessment ; under clause (b), he may set aside the assessment and direct the Income-tax Officer now AO to make a fresh assessment. The appellate authority has, therefore, plenary powers in disposing of an appeal. "The scope of his power is conterminous with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do".

41. As we can see, CIT v. P. Mohanakala [2007] [291 ITR 278](#) (SC) deals with the powers of the High Court in interfering with the findings of fact—and concurrent findings, at that by re-appreciating the evidence. The Supreme Court has held in the negative. The Supreme Court in Jute Corporation of India Ltd. v. CIT [1991] [187 ITR 688](#) (SC) has stated that the declaration of law is clear that the power of the appellate authority is co-

terminus with that of the Income-tax Officer, and if that is so, there appears to be no reason why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income-tax Officer. No exception could be taken, held the Supreme Court in CIT v. Nirbheram Daluram [1997] [224 ITR 610](#) (SC) to this view as the Act places no restriction or limitation on exercising appellate power. Even otherwise, an appellate authority while hearing the appeal against the order of a subordinate authority, has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitation, if any, prescribed by the statutory provisions. Absent any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have.

42. In CIT v. Shapoorji Pallonji Mistry [1962] [44 ITR 891](#) (SC), the assessment year was 1947-48, and the case was finally decided in February 14, 1962. So the Act considered was pre-Independence enactment. Examining section 31 of the old Act, the Supreme Court has held that there is no doubt that the appellate authority can "enhance the assessment". This power must, at least, fall within the words "enhance the assessment", if they are not to be rendered wholly nugatory.

43. Now, we may examine the authorities that also have dealt with the powers of the appellate authority but seem to have taken a divergent path.

44. In CIT v. Rai Bahadur Hardutroy Motilal Chamaria [1967] [66 ITR 443](#) (SC) a three-judge Bench of the Supreme Court has observed that it is only the assessee who has a right conferred under section 31 to prefer an appeal against the order of assessment made by the Income-tax Officer. If the assessee does not appeal the order of assessment becomes final subject to any power of revision that the Commissioner may have under section 33B of the Act. Therefore, it would be wholly erroneous to compare the powers of the appellate authority with the powers possessed by a court of appeal, under the Civil Procedure Code. The Appellate Assistant Commissioner is not an ordinary court of appeal. It is impossible to talk of a court of appeal when only one party to the original decision is entitled to appeal and not the other party, and because of this peculiar position the statute has conferred very wide powers upon the appellate authority once an appeal is preferred to him by the assessee.

45. Chamaria goes on to hold that the appellate authority has no jurisdiction under section 31(3) of the Act to assess a source of income not processed by the Income-tax Officer "and which is not disclosed either in the returns filed by the assessee or in the assessment order," and therefore the appellate authority cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under section 31(3) of the Act

is restricted to the subject-matter of assessment or the sources of income considered expressly or by clear implication by the Income-tax Officer from the viewpoint of the taxability of the assessee.

46. A question regarding powers of the first appellate authority came up for consideration before the Supreme Court recently in CIT v. Nirbheram Daluram [1997] [224 ITR 610](#) (SC). Following the earlier decisions in Kanpur Coal Syndicate and Jute Corporation of India, the Supreme Court reiterated that the appellate powers conferred on the Appellate Commissioner under section 251 could not be confined to the matter considered by the Income-tax Officer, as the Appellate Commissioner is vested with all the plenary powers which the Income-tax Officer may have while making the assessment.

47. Indeed, examining Daluram's holding, a Division Bench of the Delhi High Court in CIT v. Union Tyres, Delhi [1999] [240 ITR 556](#) (Delhi) has observed that Daluram did not comment whether these wide powers also include the power to discover a new source of income. So, Union Tyres concludes that the principle of law laid down in Shapoorji and Chamaria still holds the field.

48. The principle emerging from various pronouncements of the Supreme Court, Union Tyres observes, is that the first appellate authority is invested with very wide powers under section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only regarding a matter raised by the assessee in appeal but also regarding any other matter considered by the Assessing Officer and determined in assessment.

49. There is a solitary but significant limitation, according to Union Tyres, to the power of revision : It is not open to the Appellate Commissioner to introduce in the assessment a new source of income and the assessment must be confined to those items of income which were the subject-matter of the original assessment.

50. In course of time, Union Tyres was doubted. In CIT v. Sardari Lal and Co. [2001] [251 ITR 864](#) (Delhi) [FB], the same issue whether the appellate authority has the power under section 251 to discover a new source of income was referred to a Full Bench. After examining the authorities holding the fielding on that issue, the learned Full Bench has held that the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered

by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147, or section 148, or even section 263 of the Act if requisite conditions are fulfilled. It is inconceivable, according to Sardari Lal, that in the presence of such specific provisions, a similar power is available to the first appellate authority. Eventually, Sardari Lal upheld the decision in Union Tyres.

51. Undeniably, the precedential position on the powers of the first appellate authority under section 251 undulates. There are seeming contradictions. But, as held by Union Tyres, and as affirmed on reference by Sardari Lal, there is a consistent judicial assertion that the powers under section 251 are, indeed, very wide ; but, wide as they are, they do not go to the extent of displacing powers under, say, sections 147, 148, and 263 of the Act.

52. Therefore, we are in respectful agreement with the view taken by the Full Bench of the High Court of Delhi in Sardari Lal. As a corollary, we hold that the Tribunal's deleting the enhancement of Rs. 22,15,116 and cancelling the order of the Commissioner of Income-tax (Appeals) on that issue call for no interference.”

[Underline supplied by us]

19. The principle culled out from the above judicial precedents clearly shows that words "enhance the assessment" are confined to the assessment reached through a particular process. It cannot be extended to the amount which ought to have been computed. There being other provisions which allow escaped income from new sources to be taxed after following a certain prescribed procedure. So long as a certain item of income had been considered and examined by the Assessing Officer from the point of view of its assessability and so long as the CIT(A) does not travel beyond the record of the year, there has never been any doubt as to his powers of redoing the categorization and bringing the assessment within the true description of the law

20. In the facts of the present case only issue considered and discussed by the assessing officer is with respect to claim of the assessee u/s 54F of the act which was rejected after inquiry and further claim alternatively made u/s 54 of the act was also rejected relying up on the decision of the Honourable Supreme court. The issue of verification of capital gain was not the issue which was at all dealt with by the assessing officer, or even a question of verification made by ld AO. There was no inquiry made by the ld AO on the issue of capital gain shown by the assessee. The ld AO has not at all considered the issue of sales consideration received by the assessee on sale of house as an issue of dispute before him. Therefore according to us, ld CIT (A) could not have made enhancement on the issue holding that capital gain shown by the assessee itself is not in accordance with the law and given a finding that no capital gain has accrued to

the assessee. CIT (A) further held that funds received by the assessee is unaccounted income of the assessee and chargeable to tax u/s 68 of the act. On the matrix as held by the Honorable Delhi high court the above issue falls within the scope of the provision of section 147 of the act and not u/s 251 (1) (a) of the act. Further the Honorable Delhi high court in para no 27 has also held that power of the first appellate authority is not restricted to examine only those aspects of assessment about which the assessee makes a grievance but it covers the whole assessment to correct the order of the Assessing Officer not only with regard to the matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. Therefore for the purpose of enhancement of income by CIT (A) , it is necessary that either the matter should be raised in the appeal by the assessee or even otherwise the matter should have been considered and determined in the course of assessment proceedings. It is not at all necessary that AO should have made any adjustment to the total income of the assessee. Hence, enhancement u/s 251 (1) (a) of the act is prohibited on the issues which have not at all been considered by the AO during assessment proceedings. This gives the common understanding that the ld CIT (A) cannot enhance income of the assessee on altogether 'new Source'. Therefore it is clear that Therefore, the CIT(A) is not competent to enhance the assessment taking an income which income was not considered expressly or by necessary implication by the Assessing Officer at all. Such is the mandate of the decisions of various high courts such as in CIT vs. National Company Ltd. (1993) 199 ITR 445 (Cal), Sait Bansilal and Raggiseti Veeranna vs. CIT (1972) 83 ITR 750 (AP), Sterling Construction & Trading Co. vs. ITO (1975) 99 ITR 236 (Kar) and Lokenath Tolaram vs. CIT (1986) 50 CTR (Bom) 237 : (1986) 161 ITR 82 (Bom). Hence issue no 1 I enlisted in para no 13 of the order is decided in favour of the assessee. In view of our decision on issue no (i), issue no (ii) does not survive and issue no (iii) is dealt with separately. In view of this we allow ground no 1,2,3,14,15 and 16 of the appeal of the assessee.”

21. Since, the facts of the instant case are identical to the case decided by the Co-ordinate Bench of the Tribunal in the case of Hari Mohan Sharma cited (supra), therefore, respectfully following the same, we hold that the learned CIT(A) in the instant case was not justified in enhancing the income of the assessee in the form of new source of income which has not been considered by the Assessing Officer and thus he had exceeded his jurisdiction u/s 251(1)(a) of the Act. Accordingly, grounds no. 3, 4 and

additional grounds are allowed.

22. Grounds of appeal no.5 raised by the assessee relates to order of the learned CIT(A) in sustaining addition of Rs.14,194/- u/s 36(1)(iii) of the Act.

23. After hearing both the sides, we find the Assessing Officer invoked provisions of section 36(1)(iii) of the Act and made addition of Rs.14,194/- being interest @12% per annum for two days on account of advance of Rs.2,20,00,000/- given to one of its supplier M/s Lakshya Overseas. We find that learned CIT(A) sustained the addition made by the Assessing Officer on the ground that the assessee is not into business of lending of money. It is the submission of the learned counsel for the assessee that in view of the decision of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. reported in (313 ITR 340)(Bom.) wherein, it has been held that where an assessee has own funds as well as borrowed funds, a presumption can be made that the advances for non business purpose have been made out of own funds and that the borrowed funds have not been used for the business purpose. According to the learned counsel for the assessee, since, own capital and free reserves of the assessee company, which is more than the advance of Rs.2,20,0000/- given to the supplier M/s Lakshya Overseas for the period of two days, no disallowance is called for. We find merit in the above arguments of the learned counsel for the assessee. A perusal of the audited balance sheet, copy of which is placed at page 18 of the paper book shows that the share

capital and reserves and surplus of the assessee company at the beginning of the year was Rs.11,93,456.12/- and at the close of the year was Rs.11,67,33,870/-. Thus, own capital and free reserves of the assessee company throughout during the year was much more than the interest free advance of Rs.2,20,00,000/- given to M/s Lakshya Overseas. We, therefore, respectfully following the decision of the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. cited (Supra) hold that the learned CIT(A) was not justified in sustaining the addition of Rs.14,194/- made by the Assessing Officer u/s 36(1)(iii) of the Act. Accordingly, the ground no.5 raised by the assessee is allowed.

24. Ground of appeal no. 6 was not pressed by the learned counsel for the assessee for which the learned DR has no objection. Accordingly, ground of appeal no. 6 filed by the assessee is dismissed as not pressed.

25. Ground of appeal no. 7 relates to the order of the learned CIT(A) in partly sustaining the disallowance of Rs.6,27,165/- out of addition of 13,27,855/-.

26. After hearing both the sides, we find that the Assessing Officer made addition of Rs.13,27,855/- on the ground that the assessee has undervalued its closing stock. We find that the learned CIT(A) sustained an amount of Rs.6,27,165/- by observing as under:-

*“6.7.2. I find that the Ld. AO had observed that the appellant had issued Gold Bar 995 (72,500 gm) and Gold Bar 999 (14,500 gm) to certain artisans, aggregating to 87,500 gms, having aggregate purchase price of Rs. 10,72,03,710/-. The appellant had paid an amount of Rs.9,17,115/- in respect of the job work charges for finishing Gold Bar*



into furnished gold jewellery. However, on return, it had recorded the value of gold jewellery manufactured at Rs.10,67,92,970/- in its books, which form part of closing stock. Accordingly, difference of Rs.13,27,855/- was held as undervaluation of closing stock by the Ld. AO.

6.8. On perusal of aggregate quantitative details filed by the appellant vide letter dated 10.2.2014, I find that the appellant had opening stock of finished gold jewellery of Rs.3,28,27,856/- (valued at Rs.1197.78 per gm). It had purchased finished jewellery having worth Rs.57,60,55,957/- (valued at Rs.1149.20 gm.). Further, during the year, the appellant had issued for job work gold bar 995 (weighing 72,500 gm.) (valued at Rs.1232 per gm.) and gold bar (weighing 14,500 gm.) (valued at Rs.1223.25 per gm.) for job work. The aggregate value of such Gold Bar that were given for job work was Rs.10,72,03,710/-. The appellant has paid job work charges of Rs.9,17,115/- to the artisans for the purpose of job work for manufacturing of such jewellery. I find that these Gold Bars were issued to the artisan on different dates starting from 2.4.2008 till 23.2.2009 and after receipt of the finished goods jewellery from such artisan, none of these jewelleries were sold and are included in the closing stock at a value of Rs.10,67,92,970/-.

6.9. The appellant submitted before me that there was no undervaluation in the closing stock and there was only mis-calculation on 2 instances of issue of Gold Bar to one artisan, Mr. Surjeet, in the Bullion register at the time of issue. It was submitted that the same was in the nature of a clerical error. On careful consideration of the above facts and on verification of the computerized stock register produced by the appellant at the time of hearing, I find no merit in the submission made by the appellant on facts. The quantity-wise and value-wise details of purchase, sales, issue of job work and opening and closing stock in respect of Gold Bar 995, Gold Bar 999 and finished Gold jewellery were taken from the stock register of the appellant and examined on an excel sheet prepared at the time of hearing in the presence of the AR of the appellant.

The said details are as under:

	Gold Bar 995			Gold Bar 999			Gold Jewellery			Job work		
	Quantity	Value	Rate	Quantity	Value	Rate	Quantity	Value	Rate	Quantity	Value	Rate
Opening Stock	9240	11416944	1235.6			0	27407.274	32827856	1197.77			
Purchase	987266.33	1232080665	1215.41	35500	43242953	1218.111	501266.176	576055957	1149.20			
Sales	908806.933	1123289154	1236.00	21000	25453404	1212.066	582202.931	675947477	1161.01			
Issued to job work	72500	89321460	1232.02	14500	17882250	1233.25				87000	107203710	1232.22
Job work charges											917115	
Received from job work							94487.77	106792970	1130.23	94487.77	106792970	1130.23
Closing Stock	25200		0	0			40958.296	50439902.93	1231.494			



*The above details clearly show that the appellant had valued the finished Gold jewellery, which should have included the cost of the Gold Bar and the job work charges, at below the cost of inputs itself, for example, the actual cost of Gold Bar 995 that were issued for job work was Rs.1232 per gm., while the actual cost of Gold Bar 999 that were issued for job work was Rs.1233.25. However, the appellant has valued finished Gold jewellery made with the help of the said Gold Bar 999 @1231.49 per gm. In addition, value in respect of the job work charges paid should have been included in the valuation of closing stock of finished jewellery. It is thus evident that the appellant had under-valued its closing stock of Gold jewellery accordingly. As the appellant holds closing stock of Gold jewellery of Rs.5,04,49,302/- as on 31.3.2009 while the balance amount of such jewellery has been sold off, the proportionate addition to closing stock in the ratio of 5,04,39,902: Rs.10,67,92,970 of the above total under-valuation of Rs,13,27,855/- is sustained. Accordingly, the addition of Rs.6,27,165/- is upheld. The appellant gets relief of the balance amount. Accordingly, Ground No.6 is partly allowed. Keeping in view the above, I hold that the Ld. AO was justified in making addition on this amount to the income of the appellant to the extent of Rs.6,27,165/- making addition on this amount to the income of the appellant to the extent of Rs.6,27,165/-.*

27. The learned counsel for the assessee drew the attention of the Bench to the written submission filed before the learned CIT(A) on this issue which reads as under:-

*“6.2. As to the difference in respect of these items, you would kindly notice from the gold bullion account that on 06.03.2009 gold was issued to three job workers vide voucher Nos. 135, 137 and 139. They were issued to job workers Surjit, Mohammed and Suleiman. Due to a clerical error the issue made to Surjit vide Voucher No. 135 was wrongly valued at Rs. 1574/- per gram instead of Rs. 1388/- per gram. As to the other two viz Mohammed and Suleiman, the valuation on that day was correctly done at Rs. 1,388/- per gram. Once again on 09.03.2009 vide voucher Nos. 141, 143 and 145 issues were made to the same three job workers. In this case too, in the case of Surjit the valuation was wrongly done at Rs.1574.74 per gram instead of Rs. 1388/- per gram. These are genuine clerical mistakes. The rates on the relevant dates were as per those taken in the cases of Mohammed and Suleiman. When the ornaments were received back on 09.03.2009 in 11.03.2009, the valuation in all the three cases was done at Rs. 1277/- per gram. In this way you would*

*kindly notice that due to the error in recording the correct rate against Surjit in the Gold Bullion Account, there is a rate difference of Rs. 186.70 per gram which multiplied by 2200 grams comes to Rs. 4,10,740/-. Added to this the manufacturing expenses of Rs.9,17,115/- the total becomes a sum of Rs. 13,27,855/-, which the AO alleges is on account of under-valuation. There is no such undervaluation. There is only mis-calculation in the two cases of Surjit in the Gold Bullion register at the time of issue. Further there has been a misunderstanding on the part of the AO with regard to making charges. These two wrong additions have culminated in to an addition of Rs. 13,27,855/- which it is prayed, be deleted.”*

28. He submitted that the learned CIT(A) has not considered the submission of the assessee on this issue properly. He submitted that given an opportunity, the assessee is in a position to substantiate either before the Assessing Officer or learned CIT(A) that there is no undervaluation of closing stock. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the Assessing Officer with a direction to give one final opportunity to the assessee to substantiate its case that there is no undervaluation of closing stock and decide the issue as per fact and law. We hold and direct accordingly. Ground No.7 raised by the assessee is allowed for statistical purpose.

29. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order was pronounced in the open court on 15.04.2021.

**Sd/-**

**Sd/-**

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Delhi/Dated- 15.04.2021

*Shekhar*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,  
ITAT, Delhi