आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.2293/Mum/2015

(**निर्धारण वर्ष /** Assessment Year : 2010-11)

Mr. Vimal Narayan Poddar, Flat No. 83-62-A, Mount Unique, Peddar Road, Mumbai – 400 026.	**बनाम**/ v.	ITO – 11(3)(4), Mumbai.
स्थायी लेखा सं./PAN : AVEPP 5411 F		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by :	Shri Satish R. Mody
Revenue by :	Ms. Pooja Swaroop, DR

सुनवाई की तारीख **/Date of Hearing : 02-03-2017**

घोषणा की तारीख /**Date of Pronouncement : 17-03-2017**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 2293/Mum/2015, is directed against appellate order dated 6th February, 2015 passed by the learned Commissioner of Income Tax (Appeals)- 7, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before learned CIT(A) arising from the assessment order dated 28th March 2013 passed by learned Assessing Officer (Hereinafter called " the AO") u/s 143(3) of the Income-tax Act,1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> "1] Jwellery valuation Rs.2,84,996/- (Rs.2,47,845 + Rs.34,151). On the facts and under the circumstances and in law and in the interest of natural justice learned CIT (A) has erred m making additions in the value of the jewellery of Rs. 2,84,996/-
>
> 2] Addition on Account of Car Rs.1,67,256/-.
>
> On the facts and under the circumstances and in law and in the interest of natural justice, the learned CIT CA) has erred in making addition of Rs.1,67,256/- in the value of Motor-car.
>
> 3] Disallowance u/s. 14A - Rs.23,338/-
>
> On the facts and under the circumstances and in law and in the interest of natural justice, the learned CIT CA) has erred in disallowing Rs.23,338/- u/s. 14A of the Income Tax Act, 1961.
>
> 4] PRAYERS
>
> (i) On the facts and circumstances of the case the appellant submits that the order passed by the Learned CIT CA) is bad in law as the said order is passed against the principles of natural justice.
>
> (ii) The appellant further craves leave to add, alter or amend his Grounds of Appeal during the course of appeal."

3. Brief facts of the case are that the assessee is engaged in rendering services like reiki and other medicinal treatments. During the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of 1961 Act, it was observed by the A.O. that the assessee has shown following jewellery of Rs. 63,85,900/- *(the correct figure should be Rs. 67,05,900, which is taken note by learned CIT(A))* in the wealth tax return, as detailed hereunder:-

(i)	Diamond Jewellery as per our valuation report	Rs. 39,15,000
ii)	Gold ornaments and jewellery as per our valuation report	Rs. 24,34,300
iii)	Silver articles as per valuation report	Rs. 3,56,600

Total value of jewellery Rs. 63,85,900

On going through income tax returns filed by assessee, it was observed by the A.O. that the assessee has not shown any jewellery in his return of income filed with the Revenue, whereas the assessee has claimed valuation charges of Rs. 34,151/- for valuation dated 28th September, 2009 of the said jewellery. The assessee was asked to explain as to why jewellery shown in the wealth tax returns was not shown in the income tax return filed with the Revenue and why the same should not to be added to the total income. The AO observed that the assessee failed to provide any satisfactory and convincing explanation and the A.O. accordingly made addition of Rs. 63,85,900/- (correct figure should have been Rs. 67,05,900/-) to the income of the assessee as income from undisclosed sources u/s 69A of 1961 Act, vide assessment order dated 28-03-2013 passed by the AO u/s 143(3) of 1961 Act.

4. The A.O. further observed that in the wealth tax return the assessee has shown motor car of Rs. 2,17,256/- which is not shown in the income tax return filed by the assessee with the Revenue. The assessee had shown only one car in the capital account of the firm. When asked, the assessee could not explain the same satisfactorily before the AO , and hence the A.O. added an amount of Rs. 2,17,256/- to the income of the assessee earned from the undisclosed sourced , vide assessment order dated 28-03-2013 passed by the AO u/s 143(3) of 1961 Act.

5. It was further observed by the A.O. from the return of income filed with Revenue that the assessee had earned certain income which does not form part of total income, which included share of benefit from Essvee Poddar Family Trust amounting to Rs. 2,12,18,597/-. The assessee was asked to explain as to why provisions of Section 14A of 1961 Act should not be applied in the instant case to disallow expenditure incurred in relation to earning of

income which does not form part of total income, but the assessee failed to provide any explanation with this regard. The A.O. accordingly made disallowance of administrative expenses of Rs. 23,338/- u/s 14A of 1961 Act read with Rule 8D(2)(iii) of Income-tax Rules, 1962 @ 0.5% of average value of investment by holding that it was not possible to earn any exempt income without incurring some administrative expenses , vide assessment order dated 28-03-2013 passed by the AO u/s 143(3) of 1961 Act.

6. Aggrieved by the assessment order dated 28-03-2013 passed by the A.O. u/s 143(3) of 1961 Act, the assessee carried the matter in appeal before the ld. CIT(A).

7. Before the ld. CIT(A), the assessee submitted that the assessee has not purchased any jewellery during the previous year relevant to the impugned assessment year under appeal . The assessee submitted that the said jewellery was inherited from his family members when he was five year old. The said jewellery is shown in wealth tax return filed with Revenue. The assessee submitted that the assessee is engaged in rendering services like Reiki and other medicinal treatment. It was submitted that he has been regularly filing wealth tax returns since more than last 35 years and the jewellery declared in the wealth tax returns for assessment years 2003-04 to 2009-10 is the same as declared in wealth tax returns for assessment years 1998-99 and assessment year 1997-98, with an exception to additions of two(2) minor items, during the period 1998 to 2009 and jewellery of which additions has been made by the A.O had been declared by the assessee in the earlier wealth tax returns. The assessee submitted that wealth tax returns for assessment years 2003-04 to 2008-09 were delayed and were filed in the year 2009 but the wealth tax return for assessment year 2009-10 was filed within time. The assessee submitted that the wealth tax returns for all the assessment years 2003-04 to 2009-10 have been accepted by Revenue. The

assessee relied upon its wealth tax returns filed for assessment years 1997-98 and 1998-99 along with the valuation report of Govt. Approved Valuer dated 15th April 1998 for valuation of jewellery as on 31st March'98 along with valuation report of Govt. approved valuer dated 29th August, 2009 for valuation of jewellery as on 31-03-2003, 31-03-2006 and 31-03-2009.

The assessee submitted that the AO erroneously held that the assessee has claimed jewellery valuation charges of Rs. 34,151/- but has not shown jewellery in return of income filed with revenue. The assessee submitted that he has not claimed said valuation charges in P&L account of the business of the assessee but were claimed in the personal capital account and it has no effect on the taxable income of the assessee and no prejudice has been caused to Revenue .

The assessee submitted before learned CIT(A) that on perusal of the two valuation reports and the Wealth Tax Returns for assessment years 1997-98 & 1998-99, it was clear that the jewellery items stated/declared in the two returns was the same except three (3) items. One such item is at Sr.no.4 of the Valuation Report of 2009 by Government approved valuer. The said item is one(1) 'necklace of diamonds set in white metal-Dia. Approx. 20.00 Cts'. This item was owned by the assessee but does not find mention in the wealth tax return of assessment year 1997-98 and 1998-99 because the said item was pledged by the assessee way back in October 1990 with an association known as Engineering Mazdoor Sabha (EMS). A search operation was carried out on the said EMS by Revenue and the said necklace was released to the assessee. It was submitted that since the said necklace was not in the possession of the assessee during the years after 1990, the assessee had not offered the same in the Wealth Tax Returns for years prior to assessment years 2003-04. The assessee refers to and relied upon the documents of pledge with the said Association. The other two items of difference are 20.00

Cts. Out of the 40.00 Cts. of (four) 4 diamond bangles, appearing at sr. no. 6. Out of this item, 20.00 CTS. were already existing and the balance 20 Cts. were acquired after the year 1998. Similarly the item at sr. no. 7 of the 2009 Valuation Report, viz. four (4) diamond bangles of 16 Cts., is an item acquired after the year 1998 .The assessee submitted that new items acquired (appearing at Sr. Nos. 6 & 7 of the 2009 valuation report) were purchased in the Financial year 1998-99 and shown in the books of the assessee for the year 31st March 1999, in the capital account for an amount of Rs.3,64,500/-. It was submitted that there would be a minor difference in the weight/ value of the two (2) valuation reports which was very normal in jewellery items because valuation included an element of guess-work & estimate on part of the valuer and hence difference in weight/ value ought to be ignored. The assessee referred to and relied upon the decision of the Hon'ble Allahabad High Court in CIT v. B.M. Kanodia 185 ITR 333 (All.). It was submitted that all the other items were in ownership and possession of the assessee from earlier years i.e. the year 1997 and prior to it and hence submitted that no addition is warranted u/s. 69A of 1961 Act during the impugned assessment year. It was submitted that no contrary evidence has been brought on record by the A.O. incriminating assessee that the assessee purchased any jewellery out of any undisclosed income.

The ld. CIT(A) considered the submissions made by the assessee and observed that the assessee has filed wealth tax returns for last many years. The said wealth tax returns cannot be treated at additional evidences as these returns are part of department records. It was also observed that the assessee has purchased part of jewellery in financial year 1998-99 and the same was debited in the capital account of relevant previous year. The learned observed that the assessee has filed copies of wealth tax returns from the assessment year 1997-98 up to the current year. It was observed by the learned CIT(A) that the assessee has furnished evidence of item-wise details of gold, diamond

and silver jewellery and it was observed by learned CIT(A) that these items were in ownership and possession of the assessee from earlier years i.e. year 1997 and prior to it. It was observed by learned CIT(A) that valuation of jewellery was carried out as on 31st March 2003 and as on 31st March 2006 and as on 31st March 2009 for wealth tax purposes and comparative chart of items of jewellery valued for wealth tax purposes for the last three years , were as under:-

	As on 31.03.2003			As on 31.03.2009			As on 28.09.2009		
Diamond Jewellery	Weight in grams	Carats	Value	Weight in grams	Carats	Value	Weight in grams	Carats	Value
One half diamond set	16.50	5.0	52,500	16.50	5.0	75,000	16.50	5.0	75,000
-do-	47.30	10.5	1,40,000	47.30	10.5	2,00,000	47.30	10.5	2,00,000
Necklace etc.	40.40	25.0	3,50,000	40.40	25.0	5,00,000	40.40	25.0	5,00,000
Necklace	-	20.0	3,50,000	-	20.0	5,00,000	-	20.0	5,00,000
Chain	8.30	4.0	50,000	8.30	4.0	70,000	8.30	4.0	70,000
4 bangles	-	40.0	6,25,000	-	40.0	9,00,000	-	40.0	9,00,000
-do-	-	16.0	2,75,000	-	16.0	4,00,000	-	16.0	4,00,000
-do-	62.50	37.0	3,50,000	62.50	37.0	5,00,000	62.50	37.0	5,00,000
2 pairs earstud	-	4.0	1,40,000	-	4.0	2,00,000	-	4.0	2,00,000
Ring	4.50	2.0	1,70,000	4.50	2.0	2,50,000	4.50	2.0	2,50,000
8 buttons	-	2.5	31,500	-	2.5	45,000	-	2.5	45,000
4 buttons	5.50	4.0	1,40,000	5.50	4.0	2,00,000	5.50	4.0	2,00,000
Nath	4.50	2.5	35,000	4.50	2.5	50,000	4.50	2.5	50,000
Packet of loose diamonds	-	1.0	17,000	-	1.0	25,000	-	1.0	25,000
Total value of diamond jewellery			27,26,000			39,15,000			39,15,000
Gold jewellery									
Various items are described in the valuation report	1712.20	-	7,36,246	1712.2	-	21,83,055	1712.2	-	21,83,055
7 sovereigns	-	-	25,900	-	-	70,000	-	-	70,000
Total value	**-**	**-**	**7,62,146**	**-**	**-**	**22,53,055**	**-**	**-**	**22,53,055**

of gold jewellery									
Silver items									
Silver Utensils	10 Kg	-	68,000	10 kg	-	2,00,000	10 kg	-	2,00,000
300 silver coins	-	-	30,000	-	-	90,000	-	-	90,000
Total value of silver items	**-**	**-**	**98,000**	**-**	**-**	**2,90,000**	**-**	**-**	**2,90,000**

From the above comparative charts, it was observed by learned CIT(A) that jewellery which was declared in assessment year 2003-04 for the wealth tax purposes was exactly the same as has been declared for assessment year 2009-10. It was observed by learned CIT(A) that in the current previous year under consideration also, the jewellery items declared by the assessee are almost exactly the same and following jewellery owned by the appellant has been valued by the valuer as under:

i)	Diamond jewellery as per valuation report	:Rs.39,15,000/-
ii)	Gold Ornaments and jewellery as per valuation report.	:Rs. 22,53,055/-
iii)	Silver articles as per valuation report	: Rs. 2,90,000/
	Total value of jewellery	: **Rs.64,58,055/**-

The ld. CIT(A) observed that there was a difference in the total jewellery declared by the assessee i.e. the jewellery declared by the assessee Rs. 67,05,900/- (corrected figure vis-à-vis wrong figure of Rs. 63,85,900/- taken by AO) in the wealth tax return , while the valuer valued the jewellery of the value of Rs. 64,58,055/- hence it was observed by learned CIT(A) that jewellery to the tune of Rs. 2,47,845/- declared excess in the wealth tax return was an extra investment to the tune of Rs.2,47,845/- made by the assessee in the current year, the sources of which the assesse could not explain in his submissions, and hence the additions to the tune of Rs.

2,47,845/- was sustained/upheld by learned CIT(A) as against addition of Rs. 63,85,900/- made by the AO, vide appellate order dated 06.02.2015 passed by the learned CIT(A). The Revenue is not in appeal against deletion of addition by learned CIT(A) as learned DR could not bring to our notice any appeal filed by the Revenue challenging deletion of additions towards jewellery by learned CIT(A).

8. Further, learned CIT(A) observed that jewellery owned by the assessee is not declared in the asset side of the Balance Sheet for income tax purposes while the jewellery is being treated as personal asset by the assessee. Thus, the learned CIT(A) observed that jewellery valuation charges of Rs. 34,151/- will be treated as personal expenses of the assessee and cannot be allowed as business expenses u/s 37 of the Act against the professional income of the assessee , vide appellate order dated 06.02.2015 passed by learned CIT(A).

9. With respect to the car, the ld. CIT(A) observed that the assessee has made investment in motor car of Rs. 6,70,890/- out of which loan taken was Rs.4,89,634/- which source was considered as explained by learned CIT(A) . For the remaining amount of Rs. 1,81,256/- the source of which was not explained. It was also observed by the ld. CIT(A) that the assessee had further spent Rs. 36,000/- on accessories. It was also observed by learned CIT(A) from wealth tax return of the assessee that the assessee has shown an old Mercedes car valued at Rs. 50,000/- from last many years , while the aggregate value of cars shown in the Wealth Tax return was Rs. 2,17,256/-. The ld. CIT(A, thus deleted the addition to the tune of Rs. 50,000/- for old Mercedez Car which was shown for last many years but sustained the addition to the tune of Rs. 1,67,256/-, vide appellate order dated 06.02.2015 passed by learned CIT(A).

10. The ld. CIT(A) upheld the disallowance of expenditure of Rs.23,338/- incurred by the assessee for earning of exempt income as made by the AO u/s 14A of the Act r.w.r. Rule 8D(2)(iii) of Income-tax Rules, 1962. The assessee relied on the decisions in the case of CIT v. Holcim (I) Pvt. Ltd. 111 DTR (Del) 158, and decision of M/s Lakhani Marketing Incl. [2014] 111 DTR (P&H) 149, wherein the assesee contended that no dividend income has been received by the assessee during relevant previous year and hence Section 14A of 1961 Act cannot be invoked. The assessee also relied on decision of Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Co. Limited reported in 328 ITR 81 to contend that recourse to Rule 8D of 1962 Rules is not automatic and satisfaction of AO regarding impossibility of deducting the expenditure incurred for exempt income , is a sine qua non to invoke Rule 8D of Income-tax Rules, 1962 and prayed that the disallowance be deleted. The ld. CIT(A) observed that the assessee has received exempt income of Rs. 2,12,18,597/- as beneficiary of Esvee Poddar Family Trust. It was observed by learned CIT(A) that the assessee had also made investments in shares , income from which is exempt from tax and hence provisions of Section 14A of 1961 Act are attracted. The assessee has not made suo motu disallowance of expenditure incurred for earning income which does not form part of total income as is contemplated u/s 14A of 1961 Act . The learned CIT(A) observed that the assessee is contending that no expenditure is incurred towards earning of exempt income and keeping in view mandate of Section 14A(2) r.w.s. 14A(3) of 1961 Act, recourse to Rule 8D of Income-tax Rules, 1962 is justified . The learned CIT(A) observed that recourse to Section 14A(3) of 1961 Act can be made even when the assessee contend that no expenses have been incurred for earning an income which does not form part of total income. The learned CIT(A) held that even indirect expenses may have a proximate cause to the exempt income and hence must be disallowed in view of the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd., 328 ITR 81 and since the assessee has not disallowed

any expenses of his own, recourse by AO to Section 14A of 1961 Act read with Rule 8D of 1962 Rules is justified and learned CIT(A) upheld and sustained the additions of Rs. 23,338/- made by the AO , vide appellate orders dated 06.02.2015 passed by learned CIT(A).

11. Aggrieved by the appellate orders dated 06.02.2015 passed by the ld. CIT(A) , the assessee is in appeal before the tribunal.

12. The ld. Counsel for the assessee submitted that the assessee is regularly filing wealth tax return since last more than 35 years. The assessee has got valuation of jewellery done from the government approved valuer and valuation report dated 29-08-2009 is placed in paper book, wherein valuer valued the jewellery as at 31-03-2009. The wealth tax returns were filed in time for the assessment year 2009-10 and 2010-11. The wealth tax return for assessment year 2003-04 to 2009-10 were accepted by Revenue. It was submitted that these were old jewelleries acquired prior to 1998-99 except some minor items acquired in previous year 1998-99 period which were duly explained and reconciled. . It was submitted that no jewellery was acquired during the impugned assessment year. All the items were duly tallied and reconciled. There were some difference in the valuation report and the items valued by the assessee as on 31-03-2010 as declared in wealth tax return, which is due to rate difference adopted by the assessee for declaring in wealth tax return which value is slightly higher than as valued by approved valuer as on 29-08-2009 as the valuer adopted market rates as on 31-03-2009 while assessee adopted market rates as on 31-03-2010. The assessee drew our attention Note No. 1-4 filed along with the return of wealth(placed in pb/page 11) , whereby no addition whatsoever was made in jewellery during the year . our attention was also drawn to wealth tax return filed for assessment year 2009-10 and 2010-11(placed in paper book /page 9-15) and also to valuation report dated 29-08-2009 for valluing jewellery issued by government approved

valuer which is placed in paper book/page 16-18. It was submitted that the jewellery is old jewellery which was duly explained and no new jewellery was purchased in relevant previous year. Our attention was also drawn to valuation report dated 29-08-2009 issued by Mandlik Brothers (Registered valuer of Jewellery by The Government of India) who valued jewellery based on rates prevailing as on 31-03-2009 and it was submitted that the assessee adjusted prices to the rates prevailing as on 31-03-2010 for wealth tax purposes.

Similarly, with respect to the jewellery valuation charges of Rs. 34,151/-, the ld. Counsel submitted that the same has been debited to the capital account and no claim of deduction as business expenses were made to reduce professional income. The ld. Counsel also drew our attention to the order of the ld. CIT(A), however no capital account is placed in paper book filed with the tribunal.

Further, with respect to the addition on account of car to the tune of Rs. 1,67,256 sustained by learned CIT(A), the ld. Counsel submitted that the assessee is having one old Mercedes car of value Rs. 50,000/- declared from year to year which is accepted by learned CIT(A) and there is no dispute as to the same , while the dispute has arisen with respect to second vehicle owned by the assessee which is Toyoto Innova car which was purchased in the year 2007 and was financed from loan from Kotak Mahindra Prime Ltd. . Our attention was drawn to invoice for purchase of said Toyota Innova which was purchased by assessee on 26-07-2007. The said invoice is placed in paper book/page 22. The said invoice which is in the name of the assessee for purchase of Toyota Innova car carries the remarks that the said Toyota Innova is hypothecated to Kotak Mahindra Prime Limited .It was submitted that no new car was purchased in the previous year relevant to impugned assessment year. The assessee placed on record the invoice of the car and

submitted that no addition can be made on this account as no car was purchased during the previous year relevant to the impugned assessment year. It was not shown in the balance sheet but it was debited to the capital account was the submissions of learned counsel for the assessee.The ledger account of loan availed from Kotak Mahindra Prime Limited is placed in paper book page 20-21. The insurance documents and amortization chart of loan from Kotak Mahindra Prime Limited is also placed at paper book/page 2-8. Our attention was drawn to depreciated value as shown in insurance documents placed in paper book/page 6 and it was submitted that the said value was adopted for reflecting in wealth tax returns after adjusting for outstanding loan payable to Kotak Mahindra Prime Limited.It was submitted that the same basis was adopted for earlier years and chart along with insurance documents for earlier years are placed in paper book/page 1-6.

With respect to the disallowance u/s 14A of 1961 Act amounting to Rs. 23,338/-, the ld. Counsel submitted that A.O. invoked provisions of Section 14A of 1961 Act read with Rule 8D(2)(iii) of 1962 Rules and 0.5% of the average value of the investment was computed as disallowance for expenditure incurred in relation to earning of exempt income u/r 8D(2)(iii) of 1962 Rules r.w.s. 14A of 1961 Act. He submitted that since there was no exempt income earned by the assessee by way of dividend on share investments , the A.O. cannot invoke the provisions of Section 14A of the Act, hence, no disallowance can be made. The learned counsel fairly submitted that the assessee earned exempt income of Rs. 2,12,18,597/- from Esvee Poddar Family Trust as his beneficial share. The ld. Counsel relied on the decisions of Hon'ble Delhi High Court in the case of CIT v. Holcim (I) Pvt. Ltd. (2014)111 DTR (Del) 158 and decision of Hon'ble Punjab and High Court in the case of CIT v. M/s Lakhani Marketing Incl. [2014] 111 DTR (P&H) 149.

13. The ld. D.R. relied on the order of the ld. CIT(A) . She also relied on CBDT Circular No. 05/2014 dated 11.02.2014 to contend that disallowance of expenditure incurred in relation to earning of exempt income shall be made even if there is no exempt income earned by the assessee during the relevant previous year.

14. We have considered rival contentions and also perused the material available on record including the case laws. We have observed that the assessee is regularly filing wealth tax returns .The jewellery owned and possessed by the assessee were duly declared in wealth tax returns, but the same was not reflected in the income tax return filed with Revenue. The assessee had produced said wealth tax returns from assessment year 1998-99 to 2010-11 before the learned CIT(A). The wealth tax returns upto assessment year 2009-10 were accepted by Revenue. The AO made additions towards the entire jewellery as reflected in the wealth tax return for assessment year 2010-11 , while the learned CIT(A) after going through the entire records of wealth tax and valuation reports gave partial relief with respect to the value of jewellery as reflected in valuation report dated 29-08-2009 of government approved valuer to the tune of Rs.64,58,055/- who valued jewellery based on market rate prevailing as on 31-03-2009, while the assessee had declared jewellery to the tune of Rs. 67,05,900/- in his wealth tax return for assessment year 2010-11 based on market price of gold and silver as on 31-03-2010, wherein learned CIT(A) upheld/sustained the addition of difference of Rs. 2,47,845/- between the two values while rest of the additions were deleted by learned CIT(A). The dispute thus narrowed down to the additions sustained by learned CIT(A) which is to the tune of difference of Rs. 2,47,845/- between value of jewellery as reflected in valuation report dated 29-08-2009 by government approved valuer adopting market value as on 31-03-2009 wherein total jewellery was valued at Rs. 64,58,055 (paper book/page 16-19) whereas the assessee declared the value

of jewellery in wealth tax return for assessment year 2010-11 at Rs. 67,05,900/- valuing the jewellery as per market price as on 31-03-2010. The assessee has also filed copy of wealth tax return for assessment year 2009-10 and 2010-11 which are placed in paper book page 9-15. We have carefully gone through the value as declared in valuation report as prepared by government valuer on 29-08-2009 based on market value as on 31-03-2009 and the value as declared in wealth tax return as on 31-03-2010 and we have no hesitation in holding that this difference of Rs. 2,47,845/- between the two values is merely difference on account of higher value of gold and silver adopted by assessee as on 31-03-2010 for filing wealth tax return for assessment year 2010-11 as against value as on 31-03-2009 adopted by government approved valuer and there is no addition to investment in jewellery which can be brought to tax within ambit of Section 69A of 1961 Act as unexplained jewellery, as the assessee has not made any additions to the jewellery during the relevant previous year as is emerging from records produced before us . The perusal of the computation of wealth as on 31-03-2010 which is placed at page/11 of paper book clearly reflects vide note no 1-4 that there is no change in the items of jewellery as on 31-03-2010 vis-à-vis items as on 31-03-2009. Further, it also reflect that gold jewellery which was valued at Rs. 12,750/- per 10 gms as at 31-03-2009 was valued at Rs. 13,870/- per 10 gms as at 31-03-2010 for the purposes of filing wealth tax return. The approved valuer while issuing valuation report dated 29-08-2009 has adopted rate of gold as on 31-03-2009 of Rs.12,750/- per 10 gms which is clearly reflected in said valuation report. Similarly, the assessee valued silver at 24,530/- per kg as on 31-03-2010 for filing wealth tax return for assessment year 2010-11 as against rate of Rs. 20,000/ per kg adopted as at 31-03-2009 while filing wealth tax return. The government valuer adopted rate of Rs. 20,000/- per kg while valuing silver in his valuation report dated 29-08-2009 for valuing silver as at 31-03-2009. Thus, the difference which arose in valuation between the valuer report dated 29-08-2009 and the value

declared by assessee in wealth tax return for assessment year 2010-11 is merely on account of higher rate of gold and silver adopted as prevailing as on 31-03-2010 vis-à-vis rate of gold and silver adopted by approved valuer in his valuation report dated 29-08-2009 which report is based on market rate of gold and silver as at 31-03-2009 We do not find any merit in the contention of the Revenue and in our view no addition u/s 69A to the tune of Rs. 2,47,845/- on account of unexplained jewellery cannot be sustained and is hereby ordered to be deleted.We order accordingly.

With respect to jewellery valuation charges of Rs. 34,151/- disallowed by the AO and as sustained by learned CIT(A) on the grounds that these are personal expenses and cannot be allowed as business expenses to be reduced from business income , as jewellery was held to be personal asset of the assessee. The assessee is contending that the same was debited to capital account of the assessee and no such claim has been made by the assessee as deduction as business expenses from business income of the assessee, but no capital account has been filed in the paper book filed before the tribunal. The said contention of the assessee need verification and the matter is restored to the file of the AO for verifications of the contention of the assessee that the said sum of Rs. 34,151/- was debited to capital account of the assessee and not to the Profit and Loss Account of Business of the assessee and hence , no prejudice is caused to Revenue. after giving proper and adequate opportunity of being heard to the assessee. We order accordingly.

With respect to the addition on account of car and accessories to the tune of Rs. 1,67,256 sustained by learned CIT(A), we find that the assessee was having one old Mercedes car of value to the tune of Rs. 50,000/- which was shown regularly in the wealth tax return for the last so many years and was accepted by the Revenue and there is no dispute as to the same. The assessee acquired another Tototo Innova car in July 2007 for Rs. 9,64,236/-

against which loan of Rs. 8,75,500/- was availed by the assessee from Kotak Mahindra Prime Ltd.. The invoice and complete loan account details are produced by the assesee in the paper book filed with the tribunal which is on record. The ledger extract of the said car loan from Kotak Mahindra Prime Limited is also filed in the paper book . The assessee has also explained that the value of the car adopted for wealth tax purposes was depreciated value of car as adopted by insurance company which was further reduced with the outstanding loan form Kotak Mahindra Prime Limited for which chart for three years are placed on record in paper book filed with the tribunal along with insurance cover for all these years. The loan account ledger extract with respect to loan availed by the assessee for purchase of car , from Kotak Mahindra Prime Limited is also filed for all these years . The explanation offered by the assessee , in our considered view, is satisfactory as is emerging from the records produced before us. In our considered view, no addition is called for as the assessee with respect to Toyota Innova Car which has been satisfactorily explained by the assessee by producing the relevant details / evidences and hence the addition of Rs. 1,67,256/- with respect to car owned by the assessee as is declared in wealth tax return but the same was not declared in income tax return , is hereby ordered to be deleted. We order accordingly

The next addition is with respect to the disallowance u/s 14A of the Act. We have observed that the assessee has earned exempt income to the tune of Rs. 2,12,18,597/- as his beneficial share from Esvee Poddar Family Trust. The assessee has also invested in shares , on which no dividend income was received during the previous year relevant to impugned assessment year. The assessee has claimed that no expenses have been incurred in relation to earning of total income which does not form part of the total income. It is also claim of the assessee that since no dividend income is received , no disallowance of expenses incurred in relation to earning of income which does

not form part of total income can be made by invoking Section 14A of 1961 Act. The AO has adopted Rule 8D of 1962 for computing disallowance of expenses incurred in relation to earning of income which does not form part of total income u/s 14A of 1961 Act. The disallowance worked out by the authorities below was Rs. 23,338/- u/r 8D(2)(iii) of 1962 Rule read with Section 14A of 1961 Act. In our considered view, the A.O. has rightly invoked provisions of section 14A of the Act and made the disallowance by adopting Rule 8D of 1962 Rules as method for computing disallowance keeping in view factual matrix of the case as the assessee has merely stated that no expenses have been incurred in relation to the earning of the income which does not form part of total income. The assessee did not elaborate the expenses and nature of incurring of the said expenses and the assessee merely stated that no expenses have been incurred for earning exempt income .The AO was not satisfied with the correctness of the claim made by the assessee that no expenses have been incurred in relation to earning of income which does not form part of total income as the assessee did not come out with any details as to the details and nature of expenses incurred by the assessee, while a bald claim is made that no expenses were incurred which could be disallowed by invoking Section 14A of 1961 Act. The facts of the details and nature of the accounts of the assessee are especially within the knowledge of the assessee and hence, the burden of proving that fact is upon the assessee . If a fact which especially are within the knowledge of the person, a duty and onus is cast on the person within whose knowledge especially such facts are , to prove such facts. This is the mandate of Section 106 of The Indian Evidence Act,1872 which is reproduced herein below :-

> *" 106. Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*
>
> *Illustrations*
>
> *(a)****

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

The assessee had in its knowledge especially fact of having incurred expenditure in relation to earning of exempt income as the assessee is privy to its accounts. The assessee did not come forward and divulge details and nature of these expenses which are incurred by the assessee in relation to earning of exempt income having regard to the accounts of the assessee, to enable the AO to make disallowance of such expenditure as per mandate of Section 14A of the Act of 1961 which are incurred in relation to earning of exempt income having regards to the accounts of the assessee and in the absence there-of the furnishing of details/break-up by the assessee of the expenditure incurred in relation to earning of exempt income having regards to the accounts of the assessee which fact are especially within the knowledge of the assessee , the assessee did not discharged burden and onus caste upon him by Section 106 of the Indian Evidence Act, 1872 and consequently in absence of non-furnishing of these details, the AO could not ascertain the amount of disallowance of expenditure incurred in relation to earning of exempt income having regards to the accounts of the assessee in accordance with mandate of Section 14A(2) r.w.s 14A(3) of the Act and went ahead by adopting method as provided for by Rule 8D of 1962 Rules for making disallowance. The AO in the absence of details and break-up of disallowance of expenditure furnished by the assessee u/s 14A of the Act incurred in relation to earning of exempt income, proceeded by rejecting contention offered by the assesse that no expenditure has been incurred for earning of exempt income and recorded satisfaction as mandated by Section 14A of the Act before proceeding to invoke Rule 8D of Income-tax Rules, 1962. Thus keeping in view factual matrix of the case as detailed above in the instant case, in our considered view, the assessee has failed to discharge primary and initial burden/ onus as mandated u/s 106 of the Act of 1872 as is cast on

the assessee as these are facts which are especially and exclusively within the knowledge of the assessee and the assessee did not discharge its burden u/s 106 of Act of 1872 as it comes forward with the bald explanation that no expenses have been incurred without referring having regards to the accounts of the assessee as mandated u/s 14A of the Act of 1961 r.w.s Section 106 of the Act of 1872. Once the assessee discharges its primary burden/onus as mandated u/s 14A of the Act of 1961 r.w.s. 106 of the Act of 1872 wherein the assessee comes forward with complete details and nature of expenses incurred in relation to the earning of exempt income having regards to the accounts of the assessee, then only the primary onus / burden cast on the assessee shall stood discharged which in the instant case has not been discharged as no explanation has been submitted except that a bald statement without reference to accounts that no expenses have been incurred in relation to earning of exempt income . The AO in the absence of any explanation of the assessee recorded satisfaction that claim of the assessee is incorrect and proceeded to make disallowance of expenses incurred in relation to earning of exempt income by invoking Section 14A of 1961 Act r.w.r. 8D of 1962 Rules which is one of the method prescribed for making disallowance u/s 14A of 1961 Act, as the assessee withheld information having regards to the accounts of the assessee . The assessee did earn exempt income as detailed above during the relevant previous year from trust. We do not find any merit in the submissions of the assessee, thus, we uphold the additions of Rs. 23,338/- made by the A.O. u/s 14A of 1961 Act by invoking Rule 8D(2)(iii) of 1962 Rules. We order accordingly.

15. In the result, appeal filed by the assessee in ITA No. 2293/Mum/2015 for assessment year 2010-11 is partly allowed as indicated above.

Order pronounced in the open court on 17th March, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांकः 17-03-2017 को की गई ।

Sd/-	sd/-
(C.N. PRASAD)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **17-03-2017**

व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai H" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**