

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI. SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No. & Assessment Year	Appellant	Respondent
198/Bang/2015 2012-13	M/s. Fusion – Jewels of South, No.503, Surya Kiran Complex, 2 nd Floor, 50 Ft. Road, Hanumanthnagar, Bengaluru-560004. PAN : AACFF1871C	The Deputy Commissioner of Income Tax, Circle 3(1), Bengaluru.
384/Bang/2015 2012-13	Assistant Commissioner of Income Tax, Circle 5(2)(1), Bengaluru.	Shri. Kota Sandeep, C/o. M/s. Fusion Jewels of South, No.503, Surya Kiran Complex, 2 nd Floor, 50 Feet Road, Hanumanthnagar, Bengaluru-560004. PAN:BPAPS 6447 F
385/Bang/2015 2012-13	-do-	Shri. Pavidu Aswathnarayana, C/o. M/s. Fusion Jewels of South, No.503, Surya Kiran Complex, 2 nd Floor, 50 Feet Road, Hanumanthnagar, Bengaluru-560004. PAN : AZBPA 1203 H
386/Bang/2016 2012-13	-do-	Shri. Hanumantharaju, C/o. M/s. Fusion Jewels of South, No.503, Surya Kiran Complex, 2 nd Floor, 50 Feet Road, Hanumanthnagar, Bengaluru-560004. PAN : AHEPH 6953 Q

C.O. No. & Assessment Year	Appellant	Respondent
120/Bang/2015 2012-13 (in ITA No.384/Bang/2015)	Shri. Kota Sandeep, PAN:BPAPS 6447 F	Assistant Commissioner of Income Tax, Circle 5(2)(1), Bengaluru.
121/Bang/2015 2012-13 (in ITA No. 385/Bang/2015)	Shri. Pavidu Aswathnarayana, PAN : AZBPA 1203 H	-do-
122/Bang/2015 2012-13 (in ITA No.386/Bang/2015)	Shri. Hanumantharaju, PAN : AHEPH 6953 Q	-do-

Assessee/C.O. by : Shri. S. R. Kiron, CA
Revenue by : Shri. Sanjay Kumar, CIT-III

Date of hearing : 20/06/2017
Date of pronouncement : 20/09/2017

O R D E R

Per Sunil Kumar Yadav, JM :

These appeals are preferred by the assessee as well as Revenue against the respective orders of the CIT(A). In the Revenue's appeal, the assessee has filed the cross objections in support of the order of the CIT(A). Since these appeals and COs were heard together, they are being disposed off through this consolidated order. The issues raised in these appeals are interrelated. Therefore, these appeals are disposed off simultaneously.

2. The facts in brief with regard to issues involved in these appeals borne out from the record are that Shri. Pavidu Aswathanarayana, Shri. Hanumatharaju and Shri. Kota Sandeep, the employees of M/s. Fusion – Jewels of South were apprehended on 15.06.2011 by the police while staying at Rainbow Lodge in Hyderabad in whose possession gold jewellery weighing 8691.400 grams was found. The DIT, Investigation, Hyderabad received information from the police on the same day about the seizure of gold from the said three persons. The ADIT, Investigation, immediately proceeded to the police station and recorded the statements of these three persons under section 131 of the I.T. Act (hereinafter called as an "Act"). According to the statement given by these said three persons, they were deputed by the firm M/s. Fusion – Jewels of South for selling gold ornaments weighing 8.5 kgs but they were not carrying any documents like way-bills issued by the Commercial Tax Department for going

out of the Karnataka State for doing business in gold ornaments. On the basis of the warrant of authorization, gold ornaments weighing 8691.400 grams valued at about Rs.1,96,42,564/- were seized by the ADIT Investigation, Hyderabad from all these three persons. On the basis of their statements, the partners of the appellant firm Mr. Rajesh was examined on the same day i.e., 15.06.2011 and he went on record saying that in the letter dated 13.06.2011 issued by the firm to the said three persons (in which there was no mention about the items of gold ornaments handed over to them), they were instructed to handover the entire quantity of gold ornaments weighing 8.5 Kg to M/s. Malabar Jewellers, Kukatpalli and M/s. P. S. Jewellers, Panjagutta and obtain acknowledgement from them. At the same time, Shri. Rajesh, partner of the firm, admitted that he had no explanation for the extra gold ornaments weighing 4.184 kgs and offered the value thereof amounting to Rs.87,10,800/- as additional income for the year ended 31.03.2011 i.e., assessment year 2011-12. Though the admission of excess ornaments was approved by another partner viz., Shri. Arjun before the ADIT but in the return of income subsequently filed for the assessment year 2011-12, the additional income of Rs.87,10,800/- was not disclosed. It was subsequently transpired from further interrogation of the said three persons and investigation that the parties at Hyderabad to whom the gold ornaments were meant and carried by them were not interested in buying the ornaments, which was found to be contradictory to the earlier statements.

3. Investigation of the firm's office at Bangalore revealed closing stock as per statements given by its partners that gold bullion, gold ornaments owned by the firm and labour gold (i.e., gold entrusted by other jewelers for earning

labour charges) weighed 1412.540 grams, 4869.565 and 4148.680 grams respectively aggregating to 10428.785 grams.

4. When the assessee was asked to reconcile the gold ornaments sent to Hyderabad with the stock available, Shri. L. Prashanth, Sales Executive of the firm explained that ornaments sent to Hyderabad consisted of own gold and labour gold available with the firm. From these facts, the AO concluded that labour gold could not have been sent to Hyderabad as it belonged to some other jeweler. The AO accordingly having relied on the provisions of section 132(4A) formed a view that though these three persons are taking the plea that the stock belongs to the firm but the plea has to be rejected for the reasons that neither these three persons nor the firm could conclusively prove that the stock belonged to the firm. Therefore the additions on account of unexplained jewellery found from these three persons are to be made under section 69 of the Act. The AO accordingly made the substantive addition of Rs.72,78,290/- in the hands of Shri. Kota Sandeep for possessing jewellery at 3216.500 grams, Rs.66,71,604/- in the hands of Shri. Pavidu Aswathnarayana for possessing of jewellery of 2945.400 grams and Rs.57,23,170/- in the hands of Shri. Hanumantharaju for possessing jewellery of 2945 grams. In order to protect the interest of the Revenue, the AO has also made a protective addition of Rs.1,96,42,564/- for the entire jewellery found and seized in the hands of the firm i.e., Fusion – Jewels of South.

5. Aggrieved, the individuals as well as the firm preferred an appeal before the CIT(A) and the CIT(A) re-examined the entire issue and has held that before making addition in the hands of individuals i.e., employees of the firm, the AO should have brought on record the individual capacity to have had enough financial resources for having made investment to do business in gold

jewellery but has failed to do so. He has taken a cognizance of the facts that some partners have come forward to own the jewellery seized from the three employees as belonging to the firm. The CIT(A) accordingly deleted the additions in the hands of the individuals i.e., employees of the firm but approved the action of the AO for bringing to tax the amount of Rs.1,96,42,564/- representing the value of investment in gold jewellery weighing 491.8691 grams.

6. Aggrieved with the order of the CIT(A), the assessee firm has preferred an appeal before the Tribunal against the order of the CIT(A) confirming the additions in the hands of the firm on substantive basis. The Revenue has also challenged the order of the CIT(A) deleting the additions in the hands of the individuals. Against the Revenue's appeal, the individuals or the employees have filed cross objections supporting the order of the CIT(A).

7. Grounds raised in the assessee firm's appeal are extracted hereunder for the sake of reference:

- “1. The Order of the Learned Authorities below in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The Learned Authorities below have erred in making an addition invoking / confirming section 69C of the Income Tax Act on the ground that the Appellant was unable to reconcile 4,148.680 gms of Gold Jewellery stock contrary to facts and evidences before them and hence deserves to be deleted.*
- 3. The Learned Authorities below failed to note / appreciate that the Gold Jewellery seized were fully accounted in the books and reconciled resulting thereof in no investments not recorded or explained for in the books of the firm. Hence the addition made / confirmed deserves to be deleted.*
- 4. The Learned CIT(A) while confirming the addition made of the value of Gold Jewellery weighing 4,148.680 gms in gold,*

completely relies on one single factor of the partners admission obtained under coercion on 15.06.2011 before ADIT at Hyderabad police station to that effect. The Learned CIT(A) failed to note

- i) that the Learned AO himself in the Remand Report dated 04.08.2014 has stated that the declaration was made with the expectation that the three employees and the Gold Jewellery would be released.*
 - ii) that the admission made has no evidentiary value. Hence the addition made / confirmed deserves to be deleted.*
- 5. The Learned CIT(A) ought to have noted that the simultaneous enquiry at Bangalore on 15.06.2011 had confirmed the Appellant's claim, which has not been contradicted either by ADIT or by the Assessing Officer at any stage.*
 - 6. The Learned CIT(A) has failed to note that the Appellant firm had accounted for the entire 8.5kgs of Gold Jewellery seized in its books of account.*
 - 7. The Learned CIT(A) is not justified in confirming the addition of 4,542.72 gms of balance Gold Jewellery when the finding was given only in respect of 4,148.680gms, impliedly accepting that the balance of Gold Jewellery weighing 4,542.72 gms was accounted and explained.*
 - 8. The assessment is based on the action u/s 132(1) conducted on the 3 employees_and the same has to be held bad in law since the whole proceedings, is bad in law for the following reasons that :*
 - a) Requisition in terms of u/s132A (1)(c) is not incorporated in the assessment of the firm or the employees to justify invoking of section u/s132(4A) when admittedly the process started with the police apprehending the 3 employees and the Gold Jewellery.*
 - b) The Transit / Approval voucher dated 13.06.2011 which was in possession of the Employees was deliberately suppressed or not taken cognizance of and not seized by the ADIT as the same had it been seized, would evidence that the Gold Jewellery belonged to the firm and that the contents thereof would have to be presumed to be true as per law and consequently invoking of u/s 132(1)(iii) & 132(4A) would be illegal.*

9. For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant humbly prays that the appeal may kindly be allowed.”

8. During the course of hearing, the learned counsel for the assessee firm has emphatically argued that whatever jewellery was found during the course of search from its employees, it was properly recorded in its books of accounts while sending its employees to Hyderabad for approval of the jewellery from the Hyderabad buyers and a printing standard /approval voucher dated 13.06.2011 was issued by the firm. He further invited our attention to the stock summary filed during the course of hearing with the submission that stock of bullion gold, gold and gold labour was of 10,428.785 gms, out of which 8691.400 gms was sent to Hyderabad through its employees for sale. Therefore the assessee was possessing sufficient gold at the relevant point of time and no addition under section 69 is called for on account of unexplained investment. The assessee has furnished the reconciliation statement before the lower authorities but they have not appreciated the fact that assessee possessed the sufficient gold jewellery. It is not a case where the Revenue authorities have conducted search at the office premises of the assessee firm and found some excess jewellery. Therefore no addition under section 69 is called for.

9. The learned DR on the other hand has contended that at the time of confiscation of the jewellery from the employees of the assessee firm in Hyderabad statement of the partners of the firm Shri. Rajesh and Shri. Arjun were recorded by the ADIT and both of them have admitted that they have extra gold ornaments weighing 4.184 kilo grams and they have offered the value of the same at Rs.87,10,800/- to tax but while filing the return of income, they did not offer this income to tax. The learned DR further invited our attention to the stock summary filed by the assessee according to which the bullion gold was

1412.540 gms, gold was 4869.565 grms and gold labour 4146.680 gms aggregating to 10,428.785 gms. In their explanation, it was admitted by the partners of the assessee firm that the gold labour means the gold received for making jewellery or repair either from the jeweler or from the customers. Therefore, once the jewellery or the gold received for the manufacture of customized jewellery or specific jewellery or for repair and that gold does not belong to the assessee firm, how it can be sent to Hyderabad for its sale or approval. At the most, the gold and bullion can only be used for preparing the jewellery for its sale or approval to its customers at Hyderabad. Keeping in mind these facts, the partners of the assessee firm have surrendered jewellery i.e., gold ornaments of 4.184 kgs valuing at Rs.87,10,800/-. Since the assessee could not explain the source of this gold, the addition of this amount deserves to be sustained.

In rebuttal, the learned counsel for the assessee however invited our attention to the order of the CIT(A) with the submission that though the CIT(A) has held that jewellery of 4481.689 gms is undisclosed investment of the assessee firm for the assessment year 2010-11/2012-13, but he upheld the action of the AO for making an addition of Rs.1,19,45,954/- instead of Rs.87,10,800/-.

10. So far as the appeals of the Revenue in individual case is concerned, we find that the learned counsel for the assessee have supported the order of the CIT(A) with the submission that addition cannot be made in both hands if it is done in the hands of the firm on substantive basis, the addition in the hands of the individual deserves to be deleted.

11. Having carefully examined the order of the lower authorities, in the light of the rival submissions, we find that undisputedly the jewellery of gold

ornaments weighing at 8691.400 gms was seized from the employees of the assessee firm i.e., Shri. Kota Sandeep, Shri. Pavidu Aswathanarayana, Shri. Hanumantharaju and these three employees have made a categorical statement that they were the employees of the assessee firm. They were sent along with jewellery to Hyderabad for its sale or approval from the buyers i.e., M/s. Malabar Jewellery and M/s. P. A. Jewellers, Panjagutta. The statements made by these employees were accepted by the partners of the firm and the partners of firm owned the jewellery with a categorical statement that these gold ornaments were sent to Hyderabad for its sale or approval. On the day of arrest of these three employees and the seizure of the jewellery, two partners Mr. Rajesh and Mr. Arjun were examined by the ADIT, Bangalore. During the course of examination, both these partners have admitted that they will not be able to produce evidence for 4.148 kg of gold ornaments and they accordingly admitted the additional income of Rs.87,10,800/- and will offer it to tax during the assessment year 2011-12. The statement made by Shri. Rajesh is extracted hereunder for the sake of reference:

“I want to admit that out of 8.5 kg of Gold jewellery, we will not able to produce evidence for 4.148 kg of Gold Ornaments. On behalf of allmy partners, I admit Rs.87,10,800/- as additional income earned by our firm M/s. Fusion, Jewells of South during the previous year relevant to the Asst. Year 2011-12. The additional income of Rs.87,10,800/- earned during F.Y.2010-11 was not recorded in the books of account of firm. The same is invested in the form gold ornaments of 4.148 kg. I am offering the saem for the asst. Year 2011-12. The income of Rs.87,10,800/- is admitted over and above the regular income of the firm for the A.Y.2011-12. I undertake to pay taxes and file return of income. To avoid protracted litigation I have voluntarily come forward to admit additional income for A.Y. 2011-12. I request the department to take lenient view and not to levy penalty and not to initiate prosecution in our case.”

The statement of Shri. Rajesh was also accepted by Shri. Arjun, Managing Partner of the firm and he has also agreed for this additional income of Rs.87,10,800/-.

12. We have also carefully perused the stock summary as on 14.06.2011, the day before the arrest of employees and seizure of jewellery and we find that assessee firm possess bullion gold of 1412.540 gms, gold 4869.565 gms and gold labour 4146.680 grms aggregating to 10,428.785 gms. It was also explained that the gold labour i.e., gold which is being given either by some other jeweler or the customers for the manufacturing of gold ornaments or repair meaning thereby the gold under the head gold labour does not belong to the assessee and assessee has no right over it to manufacture jewellery of his own choice and to send it to other customers for its sale or approval. Meaning thereby the gold ornaments available with the assessee was only 4869.565 gms for its sale or approval from the customers. Therefore the excess gold found from the employees of the assessee requires to be explained properly by the assessee firm but the assessee firm could not furnish a satisfactory explanation. However, the partners of the firm have come forward during the course of examination before the ADIT to state that they do not have any evidence for 4.148 kgms of gold ornaments valuing at Rs.87,10,800/-, and they will offer it to tax but they did not offer it to tax.

13. Keeping in view the totality of the case, we find that since the excess gold was found from the employees of the assessee and assessee could not furnish the satisfactory explanations, the addition under section 69 is called for and we therefore find no infirmity in the order of the CIT(A) restricting the addition for the excess gold ornaments of 4.148kg valuing at 87,10,800/-. But while confirming this addition, the CIT(A) has approved the action of the AO

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for making the addition of RS.1,96,42,564/- which is not called for. The observation of the CIT(A) appear to us to be correct to the extent of addition for the excess gold jewellery of 4148.689 gms. Thus we modify the order of the CIT(A) and confirm the addition of Rs.87,10,800/- for the gold jewellery weighing at 4148.689 gms, which were not duly explained by the assessee firm.

14. Since the addition in the hands of the firm is confirmed, the order of the CIT(A) deleting the additions in the hands of the individuals is also approved as there cannot be double additions. Accordingly, appeals of the Revenue stand dismissed and that of the assessee is partly allowed. Since the appeals of the Revenue are dismissed, CO of the assessee becomes infructuous and the same are also dismissed.

15. In the result, appeals of the Revenue and Cos of the assessee are dismissed and the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 20th September, 2017.

Sd/-
(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Place : Bangalore
Dated : 20/09/2017
/NShylu/*

Copy to :

1	Appellant	2	Respondent
3	CIT	4	Guard file

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore