

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
**BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

आयकर अपील सं./ITA No.418/CTK/2016

(निर्धारण वर्ष / Assessment Year :2009-2010)

Sri Sunil Kumar Sahu Proprietor, Sahuji Jewellers, Laxmi Bazar, Angul	Vs.	Income Tax Officer, Angul
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AHWPS 4582 L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Damodar Pati, AR  
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan,CITDR  
सुनवाई की तारीख / Date of Hearing : **16/08/2017**  
घोषणा की तारीख/Date of Pronouncement **22/08/2017**

**आदेश / ORDER**

**Per Shri Pavan Kumar Gadale, JM:**

The assessee has filed an appeal against the order of CIT(A)-2, Bhubaneswar, in Appeal Reference No.0062/2014-15, dated 29.08.2016, passed u/s.143(3)/254 of the Income Tax Act, 1961 for the assessment year 2009-2010, wherein the assessee has raised the following grounds :-

1. *That, the order of assessment suffers from the vice of illegality and arbitrariness.*
- B. *The, ld. Below Forum committed manifest error in law and in facts in making addition of Rs.27,29,214/- to the total income which is contrary to the observation of the Hon'ble ITAT.*
- C. *That, addition of Rs.27,29,214/- is illegal and arbitrary because the incident for taxation has not occurred and more particularly in absence of postulation of the Act for taxation.*
- D. *That, the addition of Rs.27,29,214/- is illegal and arbitrary because of non-consideration of indexation, capital in the hand of the appellant and computational mismatch.*
- E. *That, addition of Rs.36,666/- towards income out of other sources because of the fact that the said amount has not been received by the appellant.*
- F. *That the other grounds if any, shall be urged at the time of hearing.*

2. Brief facts of the case are that the assessee is in the business of retail trading of gold and silver jewellery and filed the return of income for the assessment year 2009-2010 on 29.3.2010 with total income of Rs.4,55,990/-. There was a survey operation u/s.133A on the business premises of the assessee on 6.3.2009 and the case was selected for scrutiny and in the scrutiny assessment the AO made addition to the returned income Rs.27,29,214/- as unexplained investment in purchase of excess of stock identified on the date of survey and also made addition of accrued interest of Rs.36,666/- and passed the order u/s.143(3) of the Act dated 29.12.2011 assessing total income of Rs.32,21,870/-.

3. Subsequently, the assessee filed an appeal with the CIT(A). The contention of assessee that the gold and silver disclosed in VDIS was not considered by the AO in computing the excess stock in the assessment proceedings. Whereas the CIT(A) confirmed the action of AO and observed that the assessee could not explain with reasons as to why the VDIS in respect of the gold and jewellery was not taken into consideration for stock valuation. Aggrieved by the CIT(A)'s order, the assessee has filed an appeal before the Tribunal. The coordinate bench of the Tribunal in ITA No.495/CTK/2012, dated 4.7.2012 set aside the order of CIT(A) and restored the matter to the file of AO for denovo assessment and made observation as referred by the AO at page 2 of the assessment order. Accordingly, as per the directions of ITAT, ld. AO issued notice and the ld. AR appeared on various dates. Further the AO also issued notice on 10.2.2014 to assessee to file details of stock referred at page 2 of the

assessment order. In reply the Id. AR filed detailed submissions on 26.2.2014 and the AO made findings on these written submissions where the assessee has relied on the order of the ITAT. The contention of the assessee in the assessment proceedings that there is no material evidence found on the date of survey u/s.133A of the Act and the coordinate bench of the Tribunal has set aside the order of CIT(A) and there is no undisclosed income. But the ITAT has set aside the order for making de novo assessment that taxation on investment is only on the sales as capital gains and allow indexation.

4. The assessee is holding gold and silver disclosed in VDIS and if any transfer of jewellery then the incidence of payment of tax would occur. The AO has elaborately discussed on these issues at page 4 on the method of valuation of stock found in the survey u/s.133A of the Act on 6.3.2009 is on par with accounting principles. Finally, the AO found the method of calculation of capital gains in assessee's case is not possible and also no evidence was submitted. Under these circumstances, the AO has made calculations based on the available stock position as on 31.3.2011 referred at page 5 of the order as under :-

*As seen from the stock statement filed by the assessee in Neelanchal Gramya Bank as on 31.03.2018, the stock position is as under:*

*Gold total weight 3146 gm valued @ 1180 per gram Rs.37,12,780/-*

*No stock of silver or other material was given. Taking into account the closing stock as on 31.03.2018 as opening stock as on 1.4.2008, the stock position in amount is calculated below:*

	<i>Opening balance</i>	<i>Rs.37,12,280/-</i>
<i>Add:</i>	<i>Purchase as on 6.3.2009</i>	
	<i>(Rs.28,27,869 – Rs.1,37,897)</i>	<i><u>Rs.26,89,972/-</u></i>

Rs.64,02,252/-

Less: Sale made upto 6.3.2009  
 (Rs.34,35,511 – Rs.2,82,903) Rs.31,52,608/-  
 Closing stock as per books as on 6.3.2009 Rs.32,49,644/-  
 Stock found on the date of survey on 6.3.2009 Rs.68,76,293/-  
 Excess stock found as on 6.3.2009 Rs.36,26,649/-

The assessee could not explain the stock position satisfactorily. In the explanation the assessee has explained the stock position as under :-

	OB as on 1.4.2008	Purchase upto 31.03.2009	Total	Sale	Closing stock
Gold(gm)	4038.488	2207.970	6246.458	2368.54	3877.918
Silver(kg)	31.120	9.850	40.970	2.293	38.677

In the stock statement as on 31.03.2008 filed in the bank the assessee has shown details of gold documents held weighing 3146 gm. And no stock or silver was shown. Hence, the stock shown in the statement of gold of 4038.488 gm. and silver of 31.220 kg. is not at all accepted.

Regarding source of investment, the assessee filed a capital account for the F.Y. 1987-88 relating to Asst. year 1988-89 to A.Y. 2009-10 and the closing capital is arrived at Rs.8,97,435/- for the A.Y. 2008-09. Even if the alleged closing capital is taken into account there will be a deficit of cash of Rs.27,29,214/- {Rs.36,26,649/- - Rs.8,97,435/-}. The deficit cash of Rs.27,79,214/- is treated as unexplained investment in purchase of gold and silver ornaments. The peculiarity noticed in this case is that the assessee has purchased the entire gold from customers and not from any reputed dealer. There is a suppression of purchase noticed in this case to reduce the sales to below 40 lakhs in order to avoid maintenance of accounts and compliance as per section 44AB of the I.T.Act. The assessee intentionally and cleverly reduced the purchase to a great extent. In view of the facts narrated above. Unexplained investment in purchase of gold amounting to Rs.27,29,214/- is added to total income. Penalty u/s.271(1)(c) of the IT.Act, 1961 is initiated.

And finally the AO as discussed above, assessed the total income of Rs.27,29,214/- and passed the order u/s.143(3) of the Act r.w.s254 dated 18.3.2014.

5. Aggrieved by the order of AO, the assessee filed an appeal with the CIT(A). Ld. CIT(A) having considered the grounds, findings of AO,

submissions of the assessee and the direction of ITAT, is of the opinion that the assessee could not establish the link to connect the voluntary disclosed income with the stock that he was holding and the assessee has failed to furnish detailed calculation with year-wise value of inflation index applicable in respect of capital claimed to have been sold during the course of business with details in respect of indexation provisions and confirmed the action of AO and dismissed the appeal of the assessee.

6. Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Tribunal.

7. Before us, Id. AR argued that the CIT(A) has erred in confirming the action of AO irrespective of the fact that the assessee has been following the indexation provision and the CIT(A) has not considered the directions of ITAT. Further at the time of assessment proceedings, the assessee has substantiated his contention with statement of various year-wise details and in the hearing proceedings the Id. AR filed the paper book with copies of purchase bills, copy of inventory list, certificate issued by the CIT under VDI Scheme 1997, computation of income, purchase of gold and silver register for A.Y.2008-09. But the contention of AO that the assessee has given a declaration to bank in respect of gold, but on the date of survey assessee has gold and silver which was not disclosed in his books of accounts. Ld. AR vehemently argued that the assessee is regularly assessed to income tax and offering income under the presumptive taxation provision of Section 44AF of the Act and there are no discrepancy as referred by the tax authorities and prayed for allowing the

appeal. Contra, Id. DR relied on the orders of CIT(A) and opposed to the grounds raised by the assessee.

8. We have heard the rival contentions and perused the material on record. Prima facie, the contention of Id. AR that the assessee has sufficient evidence in respect of gold and silver and also there is no deficiency for the stock. The Id. AR also relied on the purchase bills and inventory list at page 2 to 49 of the paper book, where the assessee has purchased the gold from various sources and also provided copy of inventory filed at the time of survey. We have perused the assessment order and the orders of the Tribunal and the submissions made before the various authorities. The assessee has made disclosure under VDI Scheme 1997 and filed the certificate dated 12.2.1998 issued by the CIT placed at page 1 of the paper book and also copies of the return of income filed by the assessee offering income tax on presumptive taxation basis but as per the observation of CIT(A) the assessee could not specify any link with the VDIS with the stock statements, the Id. AR vehemently placed the stock statements and the written submissions filed before the AO. The contention of Id. AR that the statements were provided to the bank and the AO has relied only on their statement and has not controvert any findings except showing that there is a deficiency in the purchase stock but the assessee has disclosed the stock in VDIS but on the query of the bench to the Id. AR of the assessee as to whether the fact was considered by the CIT(A). Ld.AR submitted that the CIT(A) has relied on the finding of AO and not material filed. Therefore, we are of the opinion

considering the voluminous material filed before us and the findings of the AO and coordinate bench decision, the CIT(A) has to relook into the facts which the Id. AR has explained before us and supported with the paper book providing the VDIS disclosure. In the interest of justice, we remit this disputed issue to the file of CIT(A) to verify and adjudicate the disputed issue and pass the order. Further, the assessee should be provided adequate opportunity of hearing before deciding the appeal.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 22/08/2017.

**Sd/-**  
**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कटक Cuttack; दिनांक Dated 22/08/2017**

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-  
Sri Sunil Kumar Sahu  
Proprietor, Sahuji Jewellers,  
Laxmi Bazar, Angul
2. प्रत्यर्थी / The Respondent-  
Income Tax Officer, Angul
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**  
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack