

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.523/Viz/2018  
(निर्धारण वर्ष/ Assessment Year:2016-17)**

Asst.Commissioner of  
Income Tax  
Central Circle-1  
Visakhapatnam

Vs. M/s Hirapanna Jewellers  
D.No.48-19-5, Opp : APSRTC  
Commercial Complex  
Dwarakanagar  
Visakhapatnam  
**[PAN : AAIFH2606M]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

**CO No.16/Viz/2019**

**(Arising out of I.T.A. No.523/Viz/2018)**

**(निर्धारण वर्ष/ Assessment Year:2016-17)**

M/s Hirapanna Jewellers  
D.No.48-19-5, Opp : APSRTC  
Commercial Complex  
Dwarakanagar  
Visakhapatnam  
**[PAN : AAIFH2606M]**

Asst.Commissioner of  
Income Tax  
Central Circle-1  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से /Revenue by  
निर्धारिती की ओर से / Assessee by

: Shri D.K.Sonowal, DR  
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 08.04.2019

घोषणा की तारीख/Date of Pronouncement

: 23.04.2019

## **आदेश /ORDER**

### **PER D.S. SUNDER SINGH, Accountant Member:**

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-3, Visakhapatnam vide ITA No.251/2017-18/CIT(A)-3/VSP/2018-19 dated 29.06.2018 for the Assessment Year (A.Y.) 2016-17 and the assessee also filed the cross objections.

2. Ground No.1 to 3 are related to the addition of Rs.64,96,471/- relating to excess stock of gold jewellery weighing 2717.400 gms found during the course of survey in the business premises of the assessee. Search & Seizure operations were conducted by the Income tax, Investigation wing of Visakhapatnam in the group cases of M/s SVBC group. Since the assessee, being a connected case to the group of SVBC, a survey u/s 133A was conducted in the business premises of the assessee on 24.11.2015 and the residential premises of the partners was covered u/s 132 of the Act. During the course of survey, excess stock of 4247.486 gms of gold jewellery was found compared to the book stock. During the survey proceedings, partner of the assessee firm submitted a purchase bill

dated 21.11.2015 from M/s B.G. Jewellers, Mumbai for net weight of 1521.744 gms which was accepted and allowed the credit and excess stock was arrived at 2752.742 gms. Subsequently, in the next hearing, the assessee furnished a bill from M/s Jai Mata Di Jewellers dated 21.11.2015 stating that the said bill was also not entered in the books as the same was lying with another partner, Shri Rajendra Jain who was on tour at the time of survey conducted in the assessee's case. The Assessing Officer (AO) verified the bill received from M/s Jai Mata Di Jewellers and found that it was a labour bill for 2717.400 gms net weight, @Rs.135 per gram and the total bill amount was Rs.3,66,849/-. But the bill did not contain the details of date on which the gold was given to M/s Jai Mata Di Jewellers and there was no evidence of issue of the gold for making jewellery with the assessee. The assessee submitted that the gold bars weighing a total of 3100 gms were purchased and issued to M/s Jai Mata Di Jewellers on 13.11.2015 vide voucher No.92, for making of gold ornaments of 916 KDM quality. These gold bars were purchased from M/s SVBC Gold, Vizag and the assessee firm received back 916 KDM ornaments weighing 2717.400 gms from M/s Jai Mata Di Jewellers vide bills of manufacture Nos.12-24 dated 21.11.2015 and 12-25 dated 05.12.2015. The AO did not find the voucher

No.92 stated to have been issued for issue of gold to M/s Jai Mata Di Jewellers. The assessee collected voucher No.92 dated 14.11.2015 on 20.12.2017 and produced the same before the AO. The AO verified the issue voucher and observed that the assessee claimed to have issued gold bars on 13.11.2015 and the bill was dt.14.11.2015, does not contain any description regarding kind of jewellery to be made, probable date of return of jewellery etc., hence, the AO disbelieved the receipt of gold jewellery from Jai Mata Di Jewellers weighing 2717.400 gms due to inconsistencies mentioned above and assessed 2717.400 gms of gold jewellery found during the course of survey as excess stock and the amount of Rs.64,96,471/- was treated as unaccounted investment u/s 69B of the Act and brought to tax.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) observed that the AO's rejection of explanation with regard to receipt of gold jewellery is merely on suspicion without carrying on any enquiry. The CIT(A) verified the ledger account of M/s Jai Mata Di Jewellers and M/s B.G.Jewellers and observed that none of the jewellers follow the practice of mentioning the details of the ornaments to be manufactured and the practice followed by the assessee is common to

all traders in this line of business. The AO's finding with regard to the mismatch in dates of issue voucher i.e. 13.11.2015 / 14.11.2015, the Ld.CIT(A) has given finding that the date was 14.11.2015 but not 13.11.2015. The Ld.CIT(A) observed that the AO has doubted the authenticity of the bill dated 21.11.2015 without having examined Shri Rajendra Kumar Jain. No infirmity or the defects were detected by the AO or the survey team to doubt the genuineness of the bill. Hence, the Ld.CIT(A) held that the AO has made the addition on mere suspicion and accordingly deleted the addition.

4. Aggrieved by the order of the Ld.CIT(A), the department has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that there was excess stock found during the course of survey for which the source was not explained by the assessee. The bill of M/s Jai Mata Di Jewellers dated 21.11.2015 produced by the assessee subsequently is an afterthought with an intention to adjust the difference and to evade the tax. Therefore, argued that the AO has rightly made the addition which should have been confirmed by the Ld.CIT(A).

5. On the other hand, the Ld.AR relied on the order of the Ld.CIT(A) and argued that, at the time of survey the assessee could not produce the bill since the partner was away on tour. No sooner the partner has arrived, the assessee has reconciled the stock position and on finding the fact that the receipt of jewellery from M/s Jai Mata Di Jewellers and the gold bars given for making 916 KDM jewellery was entered in the books and submitted the same before the AO. The Ld.AR further submitted that the purchase of gold bar and issue and receipt of gold jewellery are verifiable facts and genuine transactions. The Ld.AR further argued that survey u/s 133A was conducted in the assessee's case on 24.11.2015 and the bill was produced before the AO on 03.12.2015, within a span of 15 days, thus there was no undue delay also. Hence, argued that the Ld.CIT(A) has rightly deleted the addition and no interference is called for.

6. We have heard both the parties and perused the material placed on record. In the instant case, a survey u/s 133A was conducted on 24.11.2015 and during the course of survey excess stock of 2725.742 gms gold ornaments were found. The assessee could not explain the reason for excess stock as on the date of survey, however, subsequently, the assessee produced the bill for receipt of gold jewellery from M/s Jai Mata Di

Jewellers and reconciled stock difference. The assessee further explained that the assessee had purchased gold bars weighing 3100 gms on 13.11.2015 and issued to M/s Jai Mata Di Jewellers for making gold ornaments of 916 KDM. There is no dispute that the assessee had purchased the pure gold from SVBC Jewellers. Because of some mismatches in the entries, i.e. no entry for issue of gold jewellery to Jai Mata Di Jewellers and mismatch of date, non production of bill regarding receipt of gold jewellery on the date of survey, the AO disbelieved the evidence produced by the assessee and made the addition of excess stock which is incorrect. All these issues are discussed in detail and addressed by the Ld.CIT(A) in his order dated 29.06.2018. For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) in page No.7 to 8 which reads as under.

*(c) I have carefully considered the facts of the case, grounds raised by the appellant, written submissions furnished and the decision of the Assessing Officer in the Assessment Order. The survey party arrived at excess stock of 4247.486 gms. The Assessing Officer accepted the bill from M/s.B.G.Jewellers, Mumbai for gold ornaments weighing 1521.744 gm. The Assessing Officer did not accept the bill issued by M/s.Jaimatadi Jewellers, Mumbai for 2717.400 gms. Hence, treated the weight of 2717.400 gms as excess and the value at Rs.64,96,471/- as unexplained investment u/s.69B of the Act. The issue before me is whether the Assessing Officer is right in accepting M/s.B.G.Jewellers bill and rejecting M/s.Jaimatadi Jewellers bill? What are the factors considered by the Assessing Officer while doing so? What are the factors ignored? What the Assessing Officer would have considered reasonable?*

*There is no dispute regarding the purchase of pure gold of 3,100 gms from M/s. SVBC, Visakhapatnam on 09.11.2015 and 13.11.2015. It is also not in dispute that jewellery weighing 2717.400 gms is physically available in the shop during the survey. The appellant had issued a bill for 3,100 gms to M/s.Jaimatadi Jewellers vide voucher 92 dt.14.11.2015 was not produced by the appellant during the survey. Besides, the appellant has also failed to produce the labour bill dt.21.11.2015 for manufacturing of gold jewellery weighing 2717.400 gms on the ground that the said bill was in the custody of one of the partners who was not present in the shop on the date of survey. Be that as it may, both M/s.B.G. Jewellers as well as M/s.Jaimatadi Jewellers bills were not traced during the survey and before arriving the excess stock. Upon enquiry, the appellant had produced bill of M/s. B.G. Jewellers before conclusion of survey. Thus, the Assessing Officer considered it genuine and reasonable. Whereas in the case of M/s.Jaimatadi Jewellers, the bills were not produced as they were not physically available in the premises. The appellant had produced the copy of bill from the manufacturer on 03.12.2015 on which date a statement u/s 131(1A) of the Act was recorded. The excerpts are as under :*

*"Q.31. During the course of survey proceedings in response to question no. 15 and today in response to question no. 14, after updating the books of account the closing stock value is Rs.34,01,61,303/-. It indicates all the bills were updated and the final closing stock was arrived at after updating the books of account. Therefore, there is no scope for further entering any bills and hence the excess stock remains unexplained. Please explain.*

*Ans. I submit that one purchase bill of BG Jewellers, Mumbai dated 21.11.2015 of net weight of 1521.744 gms, was yet to entered in the books of account and the same was submitted for verification. Another bill in the name of M/s.M/s.Jaimatadi Jewellers dated 21.11.2015 was also not entered with net weight of 2717.400 gms.*

*Q.32. During the course of survey proceedings, you could not furnish any bills w.r.t. excess stock of 2725.742 gms. However, you are now submitting that there was another bill of net weight 2717.400 grns in the name of M/s.Jaimatadi Jewellers dated 21.11.2015 which you could not produce on the day of survey. Please explain the reasons as to why this bill pertaining to M/s.M/s.Jaimatadi Jewellers was not submitted during the course of survey proceedings.*

*Ans. On the day of survey my son and partner Sri Rajendra Join was not available. The above bill was with him and hence I could not produce the same."*

*It is seen that both the bills are dated 21.11.2015 and they were not entered in the books. The Assessing Officer has rejected the bill of M/s.Jaimatadi Jewellers as an afterthought. The Assessing Officer neither verified the genuineness of the bill nor brought any discrepancy or contrary facts. On the contrary, the bullion register is bearing the details of purchase of pure gold as well as issue of gold to M/s.Jaimatadi on 14.11.2015. The*

*Assessing Officer considered the date of 13.11.2015 as mismatch compared to the date of 14.11.2015 appearing on bill no.92: I have verified the bill no.92 and found the date being 14.11.2015. Further, Mr.Rajendra Jain was neither examined by survey party nor by the Assessing Officer when another partner Sri Mahendra Kumar Jain had submitted the copies of bills dt.21.11.2015 produced for verification. The Assessing Officer had doubted the authenticity of the bill dt.21.11.2015 without eliciting defects or infirmities in the bill. I have verified the ledger account of not only M/s.Jaimatadi Jewellers &M/s.B.G Jewellers but other parties where the issue of pure gold and equivalent weight of gold in new ornaments were recorded. None of the bills contain details of gold ornaments. Therefore, the method followed by the appellant is common for all manufacturers. The Assessing Officer's observation that the labour bill does not contain details of ornaments and probable date of return is of no importance. It is not a case where material, was not delivered by manufacturer without bill or vice-versa. If carrying the bill inadvertently proves to be detrimental, the Assessing Officer or survey party would have immediately verified the matter with manufacturer, whose details are very much in the possession of the Assessing Officer. If some inconsistencies of facts surface in that process, the issue would have been different. It appears Sri Rajendra Jain returned on 25.11.2015 and necessary entries were made in the books as there was time for finalising the books for the Asst. Year 2016-17. This incident happened much before recording the statement of Sri Mahendra Kumar Jain i.e. on 05.12.2015. In my considered opinion and in the light of facts and circumstances, the Assessing Officer's rejection of explanation on suspicion without carrying any enquiry is not reasonable. There is no ground for tax however strong the suspicion would be. The suspicion should emanate from inconsistencies and lack of corroboration. In this instant case, there is no such finding of the Assessing Officer. In view of the facts discussed above, I am declined to agree with the finding of the Assessing Officer. I find merit in the submissions of the appellant. Accordingly, the Assessing Officer is directed to delete the addition.*

There is no dispute that the assessee had purchased pure gold from M/s SVBC, Vizag on 09.11.2015 and 13.11.2015 and the said gold was not available with the assessee at the time of survey and it was also not in dispute that the gold jewellery weighing 2717.400 gms was physically available in the shop at the time of survey. Once, it is established that the assessee had purchased 3,100 gms and the same was not available in the

shop, there is no reason to disbelieve the issue of pure gold for making the gold jewellery ornaments. In this case, the assessee has produced the bill for receipt of gold jewellery from M/s Jai Mata Di Jewellers on 03.12.2015 which is within the reasonable time of conducting the survey. Therefore, there is no reason to disbelieve the genuineness of the bill. The AO did not make any enquiry with M/s Jai Mata Di Jewellers to find out the correctness of the bill. The assessee is free to furnish the necessary evidence to address the difference found during the course of survey in the reasonable time. In the instant case, the assessee had furnished all the bills from M/s Jai Mata Di Jewellers and voucher No.92, which was raised for issue of gold to M/s Jai Mata di Jewelelrs before the Ld.CIT(A) as well as the AO. Therefore, the assessee has established that the pure gold was issued to M/s Jai Mata Di Jewellers was received back subsequently. The department did not make out a case that the bill issued by M/s Jai Mata Di Jewellers as either bogus or fake. Therefore, we agree with the observation of the Ld.CIT(A) that the AO has made the addition only on suspicion and surmises, hence, the addition made by the AO is unsustainable. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue on this ground.

7. Ground Nos. 4 and 5 are related to the deficit cash found in the business premises during the survey. The survey team found the physical cash balance of Rs.22,65,000/- against the book balance of Rs.34,24,906/- resulting in deficit cash of Rs.11,59,906/- at the time of survey. The assessee was asked to explain the reason for deficit cash. The assessee explained that a sum of Rs.8,00,000/- was taken by the partner from the shop and kept in his residence and the balance amount of Rs.3,59,906/- was miscellaneous cash available in the counter. The assessee further argued that the survey team has not inventorised the cash available in the counter. However, the assessee offered a sum of Rs.3,50,000/- as additional income on account of deficit cash. The AO during the assessment proceedings found that the assessee has made the cash entry of Rs.9,17,200/- in the name of Mahendra Kumar Jain instead of Rs.8,00,000/-. Since there was a mismatch in the explanation given by the assessee at the time of survey and in the books of accounts, the AO treated the deficit cash found as on the date of survey as unexplained cash credit and accordingly brought the sum of Rs.11,59,906/- as income u/s 68 of the Act.

8. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) partly confirmed the addition of Rs.3,50,000/- and deleted the balance amount of Rs.8 lakhs.

9. Against the order of the Ld.CIT(A), the revenue has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that during the course of survey u/s 133A, against the book balance of Rs.34,24,906/-, physical cash found was Rs.22,65,000/- and there was deficit cash of Rs.11,59,906/-. Though at the time of survey, the partner stated that the cash of Rs.8,00,000/- was kept in the house, still there was difference of Rs.3,59,906/-. At the time of assessment proceedings, the assessee made the entry of Rs.9,17,200/- against the explanation of the assessee that a sum of Rs.8,00,000/- kept in his house. The assessee's claim that the survey team did not take into account the cash available at the counter is unacceptable since the survey was conducted in the personal presence of the partner. Therefore argued that the AO has rightly made the addition of Rs.11,59,906/- and requested to set aside the order of the Ld.CIT(A) and restore the order of the AO.

10. On the other hand, the Ld.AR argued that there was deficit cash found during the course of search which cannot be made addition u/s 68 of the Act, therefore, submitted that the addition confirmed by the Ld.CIT(A) also required to be deleted. Accordingly, the assessee has filed cross objections agitating the confirmation of addition of Rs.3,59,906/-.

11. We have heard both the parties and perused the material placed on record. In this case, there was deficit cash of Rs.11,59,906/- which was found during the course of survey and the assessee had explained that Rs.8,00,000/- was kept in his house. The said statement given at the time of survey was also confirmed u/s 132 on 24.11.2015 during the course of search conducted in the residence of Mr.Mahendra Jain. Therefore, there is no reason to disbelieve explanation of the assessee that the sum of Rs.8,00,000/- found in the residential premises was related to the business and deficit cash of Rs.8,00,000/- in the business premises stands explained. The debit entry in the capital account of the partner was made, since, the cash brought from the shop was seized from the residence of the partner and partly due to payment of income tax. The said entry has nothing to do with the cash available at the time of search. There was further difference of Rs.3,59,906/- which was stated to be partly counter cash which was not

inventorised by the survey team and offered to income. As rightly observed by the Ld.CIT(A), there is no reason to disbelieve the explanation of the assessee with regard to the source of Rs.8,00,000/- and balance of Rs.3,50,000/- was admitted as income in response to show cause notice issued by the AO vide his letter dated 04.12.2017. Since the assessee failed to explain the reason for deficit cash and admitted the same as income in its hands, we do not see any reason to interfere with the order of the Ld.CIT(A). Accordingly, we uphold the order of the Ld.CIT(A) and confirm the addition of Rs.3,59,906/-. In the result, appeal of the revenue as well as cross objection filed by the assessee on this issue are dismissed.

12. The assessee filed cross objections against the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, cross objections filed by the assessee have become infructuous, hence, dismissed.

13. In the result, appeal of the revenue as well as the cross objections of the assessee are dismissed.

Order pronounced in the open court on 23<sup>rd</sup> April, 2019.

Sd/-  
(वी.दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER  
विशाखापटणम /Visakhapatnam  
दिनांक /Dated : 23.04.2019  
L.Rama, SPS

Sd/-  
(डि.एस. सुन्दर सिंह)  
**(D.S. SUNDER SINGH)**

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/ The Revenue – Asst.Commissioner of Income Tax, Central Circle-1  
Visakhapatnam
2. निर्धारिती/ The Assessee- M/s Hirapanna Jewellers, D.No.48-19-5, Opp :  
APSRTC Commercial Complex, Dwarakanagar, Visakhapatnam
3. The Pr.Commissioner of Income Tax (Central), Visakhapatnam
4. The Commissioner of Income-Tax (Appeals)-3, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam