

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORESHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

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| ITA Nos. 909 & 910/Bang/2018 |
| Assessment Years : 2012 – 13 to 2014 – 15 |

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| DCIT, Central Circle – 1 (1), Bangalore | vs. | Shri Chandrasekhar Bhat, No. 70, 5 th B Cross, Narayanappa Layout, RT Nagar, Bangalore - 560032 PAN: ADOPB9307L |
| APPELLANT | | RESPONDENT |
| Assessee by | : | Shri Malaya Kumar Panda, C. A. |
| Revenue by | : | Ms. Neera Malhotra, CIT (DR) |
| Date of hearing | : | 18.12.2019 |
| Date of Pronouncement | : | 29.01.2020 |

O R D E R

Per Shri A. K. Garodia, Accountant Member

These two appeals are filed by the revenue and these are directed against two separate orders of learned CIT (A) – 11 both dated 29.12.2017. Both these appeals were heard together and are being disposed of by way of this composite order for the sake of convenience.

2. First, we take up the appeal for A. Y. 2012 – 13. In this year, as per Ground Nos. 1 to 3, this is the grievance of the revenue that the CIT (A) is not justified in deleting the addition of Rs. 1 Crore made by the AO on the basis of a document seized from the premises of the assessee's associate Rohini R Manohar being an agreement of sale between TIMI represented by Mr. Shahedulla Khan as the seller and Shri Gurudath Prabhu, the driver of the assessee on 10.11.2011.

3. In course of hearing, learned DR of the revenue supported the assessment order. She submitted that the order of CIT (A) should be reversed and that of the AO should be restored. She also submitted that order of CIT (A) is cryptic also and hence, even if his order is not reversed, it should be set aside and the matter be restored to his file for a fresh decision by way of a speaking order. She pointed out that on page 2 of the assessment order, the AO has noted that a questionnaire was issued to the assessee on 17.12.2015 in which it was pointed out that as per the seized document pages 1 – 8 of A – 1/RCB/1, an investment was made in a property in the name of assessee's driver Mr. M. Gurudath Prabhu for an agreed value of Rs. 3 Crores with Mr. Shahedulla Khan, out of which Rs. 1 Crore was already paid. It was also stated therein that the said driver of the assessee has stated under oath that he has signed the documents but has not paid the amount of Rs. 1 Crore. It was also stated by the AO in that questionnaire that this agreement is benami transaction in the name of the driver and the assessee was asked to show cause as to why this transaction shall not be treated as unexplained investment by the assessee. She pointed out that the assessee did not reply to the same and further opportunities were provided and finally, the assessee filed an explanation reproduced by the AO on pages 3 and 4 of the assessment order in which it was explained that said Mr. Shahedulla Khan has entered into multiple agreements of sale for property belonging to TIMI with various peoples. It was submitted that genuinity of Mr. Shahedulla Khan is already proven in department records as none of the correspondence has been received by him and TIMI has denied any kind of relationship with Mr. Khan. It was explained that this agreement is without his knowledge. It was also explained that when the assessee came to know about it, he asked his driver about it and the driver said that he signed this agreement because Mr. Shahedulla Khan gave an assurance to him that he will be paid a lump sum amount if Mr. Khan is able to crack some handsome deal. The assessee also stated that the driver may be called for a fresh statement also. It was also explained that the assessee confronted Mr. Khan with the question that why he had used the name of his driver, Mr. Khan stated that he did so to attract some prospective buyer in the known circle of the assessee. The AO reproduced some portion of the statement

of the driver on page 5 of the assessment order and thereafter made addition. But learned CIT (A) has deleted this addition in a cryptic manner. Learned AR of the assessee supported the order of CIT (A).

4. We have considered the rival submissions. We find that the explanation given by the assessee before the AO has been reproduced by the AO on pages 3 and 4 of the Assessment Order and the same is reproduced herein below for ready reference:-

In response to the showcause notice the assessee has filed explanation as under:-

As per the above seized documents you are of the opinion that I have made an undisclosed investment of Rs 1,00,00,000/- through my driver Mr. G M Prabhu.

I want to bring to your kind attention that Mr. Shahedulla Khan who represented

himself to be an Authorised person of TIMI, has entered into multiple agreement of sale for property belongs to TIMI with various people. Non of these agreements are materialize. The genuinity of Mr. Shahedulla Khan is already proven in department record as non of the correspondence has been received by him and also TIMI has denied any kind of relationship with Mr. Shahedulla Khan. I am now a victim of one such invalid agreement.

Fact of the case: Mr. Shahedulla Khan entered made an agreement of sale for a property of 7.06 acres of land at Hulimavu village belongs to TIMI with my Driver Prabhu without my knowledge. In the said agreement it is being mentioned that Mr Prabhu has advanced him Rs 1,00,00,000/- towards the same. All these happened without my knowledge. Now you are of the opinion that this is a kind of benami transaction.

Now let me make you aware of the whole situation. When I came to know about this issue and ask my driver he said me that he had signed this with an assurance from Mr. Shahedulla Khan that he will be paid a lump sum amount once Mr. Shahedulla Khan is able to crack some handsome deal. The same fact is admitted by Mr. Gurudath Prabhu Driver in his statement and if required he can be called for another round of statement. As he is not working with me I may require little time

to call for the statement if required. In continuation with my explanation, when I confronted with Mr. Shahedulla Khan as to why he has used my driver name, he admitted the same and said that he did so to attract some prospective buyers in my known circle. More over to substantiate that it was a bogus agreement to sale, the present RTC of the same property can be provided which shows that the property is still in the name of TIMI.

I request you not to consider it as a valid transaction and also pleading before you not to penalize me for an act of a fraudulent person.

5. On page 5 of the Assessment Order, the AO has reproduced the relevant portion of the statement recorded by him of the Driver of the assessee Shri Gurudath Prabhu recorded on 26.08.2013 and for ready reference, the same is also reproduced herein below:-

It is prudent to reproduce the relevant part of statement of Shri. Gurudath Prabhu recorded on 26.08.2013, which is as under:-

Q.8 You have paid Rs. 1 crore to Mr. Sahidulla Khan vide sale agreement dated 10.11.2011. please state your sources for these payments.

Ans. I have not paid above mentioned amount . but I have signed the sale agreement. Mr. Sahidulla.Khan had promised me to give a big amount.

Q.9 if you have not paid Rs. 1 crore to Mr. Sahidulla Khan, why did you sign the sale agreement . please explain.

Ans. In signed it because he had promised to give a big amount.

Q.10 you have signed the sale agreement having complete knowledge of the facts that it mentions Rs. 1crore payment by you to the vendor. Further the sale agreement is found with Chandrasekhar Bhat who is your employer. It is common sense that the evidence of any payment made is always available with the person who has made this payment or with somebody whom he has asked to keep. This implies that Shri. Chandrasekhar Bhat has made the payment using you as a benami and hence the document is found with him. Please comment.

Ans. Swarniji forced me to give the document to him.

Q.11 How many copies of the sale agreement did you sign?

Ans. I do not remember.

Q.12 This document was found in Rohini Manohar's place. Please comment.

Ans. Chandrasekhar Bhatt Swamiji has kept the document there. Why I don't know.

In light of the discussions above, as also the facts and circumstances emerging; the assessee's explanation is found to be unsatisfactory. Non materializing of the Agreement does not go to absolve the assessee of the fact of

6. After reproducing the explanation of the assessee and the statement of the Driver Shri Gurudath Prabhu, the AO has come to the conclusion that since the payment of advance is duly acknowledged by the recipient Mr. Shahedulla Khan and the assessee has not produced any document regarding cancellation of the deal and since no document is produced either from Mr. Shahedulla Khan or TIMI to the effect that no advance is received by them, addition has to be made in the hands of the assessee as unexplained investment / undisclosed investment. In this regard, we find that as per the explanation of the assessee submitted before the AO as reproduced by the AO in the Assessment Order and by us also in the above para, it was explained by the assessee before the AO that the Driver signed this agreement without paying any money because Mr. Shahedulla Khan has promised to the Driver that a lump sum amount will be paid by him once Mr. Shahedulla Khan is able to crack some handsome deal. In the statement of the Driver Mr. Gurudath Prabhu recorded by the AO on 26.08.2013 also, same thing is stated by him that he has signed the agreement because Mr. Shahedulla Khan promised him to give a big amount. Regarding this aspect as to why this agreement was found in the premises belonging to the assessee, it was explained by the assessee before the AO that the assessee was not aware of the agreement when it was executed but later on, when the assessee came to know about the same, he asked his Driver about this and the Driver explained that he has signed this agreement with an assurance from Mr. Shahedulla Khan that he will be paid a lump sum amount once Mr. Shahedulla Khan is able to crack some handsome deal. The statement of the Driver is also on the same line. It was also

explained by the assessee before AO that TIMI had declined on account of relationship with Mr. Shahedulla Khan. This was also explained by the assessee before the AO that Mr. Shahedulla Khan represented himself to be an authorized person of TIMI and he has entered into multiple agreements of sale of property belonging to TIMI with various people and none of these agreements materialized. Even after noting this submission of the assessee before him, the AO has not made any enquiry from TIMI as to whether Mr. Shahedulla Khan is an authorized representative of TIMI and whether any advance of Rs. 1 Crore was received by TIMI through Mr. Khan as per this agreement. Instead of making any query from TIMI in this regard, the AO is putting the burden on the assessee that why the assessee has not produced any document regarding cancellation of the deal and why no document is produced from Mr. Shahedulla Khan or TIMI to the effect that no advance is received by them. Hence, it is seen that instead of establishing the positive aspect that in fact advance of Rs.1 Crore was received by Mr. Shahedulla Khan and/or TIMI by bringing some corroborative material in addition to the agreement found during the course of search, the AO is expecting the assessee to prove the negative that no advance was given by him to Mr. Shahedulla Khan or TIMI. The AO has concluded that the assessee is not discharging the onus of disproving as envisaged in section 132(4A) of the Act but it is seen that the assessee has offered an explanation about circumstances under which the Driver of the assessee signed the agreement in question and stated that because of the promise of Mr. Shahedulla Khan to him that he will be paid lump sum money, the driver signed the agreement. After it, it was expected from the AO to bring some corroborative material on record by examining Mr. Khan and/or TIMI particularly when It is also explained by the assessee before AO that Mr. Shahedulla Khan has stated to the assessee that he has done so i.e., the execution of the agreement between him and the Driver to attract some prospective buyers in the known circle of the assessee. In spite of this, the AO has neither examined Mr. Shahedulla Khan nor any enquiry was made from TIMI and made the addition. On page 6 of his order, all the contentions of the assessee are noted by the learned CIT(A). This was also the contention of the assessee before the learned CIT(A) that the AO has presumed that Mr.

Shahedulla Khan was the authorized person to enter into agreement on behalf of TIMI and also to receive advance on behalf of TIMI without examining Mr. Shahedulla Khan or TIMI in this regard. Why this agreement was available in the premises owned by the assessee also was explained by the assessee and it was submitted that after knowing the fact about the said agreement, the assessee insisted his Driver to hand over the same to him because it could have created some more confusion in future. This was also stated before the AO and the CIT(A) has noted by CIT(A) on page 6 of his order that if it would have been benami transaction as has been alleged by AO then why the assessee will force the Driver Mr. Gurudath Prabhu to give agreement to him. After noting all these facts and arguments, it is concluded by learned CIT(A) that keeping in mind the facts, evidences and submissions, this addition is deleted. This conclusion is given by the learned CIT(A) after noting all the facts and submissions on pages 6 and 7 of his order and hence, in our considered opinion, it is not a cryptic order of CIT(A) and hence, no remand is required in the facts of the present case. Since the AO has not established by bringing corroborative material on record to establish that the agreement found in the course of search is a genuine agreement and in fact, an advance of Rs.1 Crore has changed hands as stated in the agreement, we find no reason to interfere in the order of CIT(A) on this issue and accordingly, ground Nos.1 to 3 of the Revenue's appeal are rejected.

6. As per grounds 4, 5 and 6, the grievance of the Revenue is regarding deletion of the addition made by the AO of Rs.1 Crore based on seized documents comprising of original sale agreement signed by Smt. R. Rohini Manohar and late Maharaja Srikanta Datta Narasimharaja Wadiyar wherein amount of Rs. 1 Crore is stated to be advanced to late Maharaja Srikanta Datta Narasimharaja Wadiyar. On this issue also, learned DR of the Revenue supported assessment order and it was the submission that the order of CIT(A) should be reversed and that of AO should be restored and this was the alternative submission that the order of the CIT(A) on this issue is also cryptic and even if his order is not reversed, his order should be set aside and matter should be restored back to the file of CIT(A) for a fresh decision by way of a

speaking order. As against this, the learned AR of the assessee supported the order of the CIT(A). He also submitted that on pages 33 to 34 of the assessee's Paper Book for Assessment Year 2012-13 is a Tribunal order in the case of Rohini R Manohar in ITA No. 1433/Bang/2018 dated 06.09.2019 and same per the same, the appeal of the Revenue was dismissed by the Tribunal for low tax effect. In this regard, the bench directed the learned AR of the assessee to file the relevant order of the CIT(A) after hearing is over but the same is not filed by learned AR of the assessee and hence, we hold that this Tribunal order has no relevance in the present case. He also submitted that sworn statements of Maharaja Srikanta Datta Narasimharaja Wadiyar recorded on 16.05.2013 is available on pages 29 and 30 of Paper Book for Assessment Year 2012-13 and in particular, our attention was drawn to question No.4 and in its answer in which, it was stated that that the transactions that Smt. Rohini R Manohar, Shri Durgesh Sarda and Shri Akhilesh Maheshwari were entered into by him but the amounts stated have not actually been paid or received. He also submitted that on pages 29 to 36 of the Paper Book submitted by the assessee, the agreement between Smt. R. Rohini Manohar and late Maharaja Srikanta Datta Narasimharaja Wadiyar as per which the purchaser paid a sum of Rs. 1 Crore in cash as can be seen on page 33 of the Paper Book filed by the Revenue. He submitted that since as per the statement recorded by the AO on 16.05.2013, Srikanta Datta Narasimharaja Wadiyar has stated that the amount stated in this agreement have not actually been paid or received, the addition made by the AO is not justified and it is rightly deleted by the CIT(A) and hence, the order of the CIT(A) should be confirmed.

7. We have considered the rival submissions. We find that it is noted by the learned AO on page 7 of the assessment order that a sale deed was seized from the residence of Smt. R. Rohini Manohar and this sale deed was between Smt. R. Rohini Manohar, purchaser and Srikanta Datta Narasimharaja Wadiyar, seller, and it was signed on 06.01.2012. Addition on this account was made in the hands of Smt. R. Rohini Manohar on substantive basis and only protective addition was made in the hands of the assessee and it is stated by the AO in the assessment order itself that the demand arising on this addition will not be

enforced. The addition made by the AO on substantive basis in the hands of Smt. R. Rohini Manohar has been deleted by learned CIT(A) and when appeal was filed by Revenue against that order of CIT(A) before the Tribunal, the same was dismissed by the Tribunal on account of low tax effect as per the Tribunal order in ITA No.1433/Bang/2018 dated 06.09.2019, copy available on pages 30 to 33 filed by the assessee for Assessment Year 2012-13. It is noted by learned CIT(A) on page No.8 of his order that this is the submission of the assessee that Smt. R. Rohini Manohar has denied any payment with respect to the above transactions with late Maharaja Srikanta Datta Narasimharaja Wadiyar and this submission of Smt. R. Rohini Manohar is corroborated with the statement of late Maharaja Srikanta Datta Narasimharaja Wadiyar in the office of the concerned DDIT, copy of which is available on pages 29 and 30 of the Paper Book filed by the assessee and this was stated in the statement that the amounts mentioned as per these transactions have not actually been paid or received. Learned IT(A) has noted all these facts and submissions and then gave a finding that keeping in view the fact, evidence and submissions, this protective addition of Rs. 1 Crore is deleted. In our considered opinion, when the submission of Smt. R. Rohini Manohar is corroborated with the statement of late Maharaja Srikanta Datta Narasimharaja Wadiyar about non payment of any money regarding this transaction, no interference is called for in the order of the CIT(A) on this issue also and accordingly ground Nos.4 to 6 are also rejected.

8. As per grounds 7 and 8, the issue is regarding deletion of the protective addition of Rs.58.40 lakhs in the hands of the assessee and this is the claim of the Revenue that the addition was deleted by CIT(A) disregarding the fact that the addition was made on the basis of seized documents found in the residential premises of Smt. R. Rohini Manohar comprising of receipt vouchers from M/s. Ravi Developers towards purchase of flat at Mumbai by her. On this issue, learned DR of the Revenue supported the Assessment Order. Learned AR of the assessee supported the order of the CIT(A).

9. We have considered the rival submissions. We find that in para No. 4C of page 7 of the Assessment Order, it is noted by the AO that one more addition of Rs.58.4 lakhs is being made in the hands of Smt. R. Rohini Manohar for Assessment Year 2012-13 on account of undisclosed payments made to M/s. Ravi Developers since Smt. R. Rohini Manohar could not explain the sources and Rs.58.4 lakhs is treated as undisclosed investment in her hands and protective addition of the same amount is made in the hands of the present assessee on this basis that the assessee may have used his own money towards investment using the name of Smt. R. Rohini Manohar. Before CIT(A), this was the submission of the assessee that Smt. Rohini R. Manohar has already explained the source of investment in her submission at the office of the AO and therefore, there is no justification for making any addition in the hands of the assessee on protective basis. Learned CIT(A) deleted these additions after recording all these facts and submissions. We find that in Assessment Order also, the AO is making protective addition on guess work without indicating any adverse material in this regard and hence, on this issue also, we find no reason to interfere in the order of the CIT(A). This ground is also rejected.

9. In the result, appeal of the Revenue for Assessment Year 2012-13 is dismissed.

10. Now we take up the appeal of the Revenue for Assessment Year 2014-15. Ground Nos.1 to 3 in this appeal are regarding deletion of the addition made by the AO on account of alleged undisclosed investment in gold jewellery and bullion of Rs.1,94,49,779/- based on factual analysis of the total gold jewellery, bullion and silver articles found.

11. Learned DR of the Revenue supported the Assessment Order whereas learned AR of the assessee supported the order of CIT(A). He also submitted that in the Paper Book filed by the Revenue for Assessment Year 2014-15, on pages 1 to 20 of the Paper Book is the valuation report of an approved valuer M/s. Gujjadi Swarna Jewellers Pvt. Ltd. dated 22.04.2013 with a valuation of Rs.35.07 lakhs in respect of jewellery owned by Shri. Govind Bhat, Rs.37.62 lakhs in respect of jewellery owned by Shri.Chandrashekhar Bhat, Rs. 37.62 lakhs in respect of jewellery owned by Kum. Roshni C. Bhat and also valuation

report in the case of Rajani C. Bhat of various jewellery items of which the page containing total amount is not available. But on page No.22 of the Paper Book, total amount is available at Rs.100,79,964/-. He submitted that since the valuation report dated 22.04.2013 is found in the course of search itself, it cannot be said that this is an undisclosed investment in jewellery and hence, the order of the learned CIT(A) should be confirmed.

12. We have considered the rival submissions. We find that this issue was decided by learned CIT(A) with this finding on page 9 of his order that various facts, evidences, seized documents and submissions clearly depicts that the jewelry found and seized in the premises of the assessee is belonging to his family and his parents. On this basis, he deleted this addition. Before the AO, the same submission was made as noted by the AO on page 3 of the Assessment Order that the jewellery found is the accumulation of entire life of his family including his parents. It was also submitted by the assessee before the AO that the entire jewellery of the entire family was listed for the purpose of wealth tax payment and at the same time, search took place. It was also submitted that the assessee's father has passed away at the age of around 86 but he was alive at the time of search and he has completed 50 plus years in profession and the assessee's mother is 80 years of age and they were living along with the assessee and the entire jewellery of the entire family was kept at the residential premises of the assessee. It was also explained before AO as noted by him in page 4 of the Assessment Order that the assessee's marriage was in the year 1993 and his daughter was born in the year 1994. In the year 2003 was the assessee's 10th marriage anniversary and in 2004 was the 10th birthday of the assessee's daughter and in 2007 was assessee's son's thread ceremony in which gold and gold jewellery was received as bhiksha. It is also noted by AO on page 5 and 6 of the Assessment Order that the assessee has submitted about the purchase of gold jewellery prior to Assessment Year 2008-09 and the same were purchased out of disclosed professional receipts of the family members and as per this chart available on page No. 6 of the Assessment Order, total purchase of jewellery was 7282.66 grams. The AO has allowed credit of

50% of such jewellery purchased by saying that one to one matching is not there with the items mentioned on valuation report and those mentioned in the bills and out of 10,505 grams, the AO has allowed credit of 3641.33 grams and held that the remaining amount of 6863.67 grams is unexplained gold and made addition. As per the valuation report available in the Paper Book filed by the Revenue, gold weight is 2703.971 grams on page 1 of the Paper Book regarding Shri. Govind Bhat. On page No.3 of the Paper Book, the valuation report of Shri. Chandrashekar Bhat of Rs.37.62 lakhs and the weight there is 698.8 grams. The valuation report on page No.4 of the Paper Book also contains the same 698.8 grams of Rs.37.62 lakhs for Kum. Roshni C. Bhat. On page No.16 of Paper Book is the valuation report of Rs.58.10 lakhs having weight of 1796.8 grams. Since the gold jewellery was produced before the registered valuer on 25.03.2013 as per page 22 of the Paper Book, value of such gold jewellery produced before the valuer on 25.03.2013 was Rs.10079964/- and considering all other jewellery valuation reports of Rs.35.07 lakhs of Govind Bhat, Rs.37.62 lakhs for Chandrashekhar Bhat Rs.37.62 lakhs for Roshni Bhat, it cannot be said that the gold jewellery found in course of search was undisclosed investment for which addition is to be made in the hands of the assessee in the present year. If the gold jewellery was produced before the valuer in March 2013, it cannot be an undisclosed investment for Assessment Year 2014-15 and hence, on this issue, we find no reason to interfere in the order of CIT(A) and accordingly, ground Nos.1 to 3 are rejected.

12. As per ground Nos.4 and 5 of this appeal, the grievance of the Revenue is regarding deletion of the addition made by the AO of Rs.107 lakhs on account of cash found and seized during search. Learned DR of the Revenue supported the Assessment Order whereas learned AR of the assessee supported the order of CIT(A). He also submitted that on pages 121 to 128 of the Paper Book is the copy of the assessee's submissions before the AO in the course of assessment proceedings on 27.01.2016 in which it was explained that the cash found at the time of search was out of the cash withdrawn from Shree Shakthi Souhardha Co-op Bank and copy of relevant bank statement is available on page 128 of the

Paper Book as per which Rs.60 lakhs was withdrawn in cash on 04.05.2013 and another Rs.47 lakhs was withdrawn in cash on the same date as per two separate withdrawal slips. It was submitted that search has taken place on the same date i.e., 04.05.2013 and this money found in course of search was the same money that was withdrawn from bank and the addition by the AO is rightly deleted by CIT(A).

13. We have considered the rival submissions. We find that on page 9 of the order of CIT(A), the learned CIT(A) has reproduced the relevant submissions made by the assessee before him on this aspect in which it is stated by the assessee that an amount of Rs.1.07 Crore was withdrawn from Shree Shakthi Souhardha Co-op Bank. This cash was available at the time of search. It was also submitted that a sum of Rs.2 Crore was transferred from Axis Bank to Shree Shakthi Souhardha Co-op Bank on 03.05.2013 and the credit in the Axis Bank was inclusive of amount of Rs.2.15 Crores received from Shri. Murthy vide cheque No.948728 (Rs. 1 Crore) and 948729 (Rs.1.15 Crore). This was also explained that this amount was given by Shri. Murthy towards joint investment proposal and after the search, the proposal was abandoned as Mr. Murthy was not interested and Rs.1 Crore was repaid to Mr. Murthy on 06.05.2013 through RTGS from Axis Bank out of the available balance in the account and a sum of Rs.1.15 Crore is still outstanding. It is also stated that Bank statement of Shri. Murthy is also submitted which shows the transfer of funds from his bank account to the account of Mrs. Rajini C. Bhat, assessee's wife. After noting these facts, learned CIT(A) has deleted the addition by stating that "after multiple hearings in his office and analysis of the documentary evidences, it is being concluded that the addition of Rs.1.07 Crores is unjustified." Since, the cash found in course of search was properly explained being withdrawal from bank and the money lying in bank is also properly explained being received from one Mr. C. Murthy, the addition made by the AO under these facts is not justified and hence, on this issue also, we find no reason to interfere in the order of the CIT(A). Accordingly, ground Nos.4 and 5 are also rejected.

14. Ground Nos.6 and 7 are regarding deletion of the addition made by the AO of Rs.52,98,972/- claimed as expenditure in the P & L Account disregarding the fact that the gross receipt of Rs.104.45 lakhs declared by the assessee includes receipts in kind of Rs.96.60 lakhs being value of gold bullion received in earlier years. On this issue, learned DR of the Revenue supported the Assessment Order. He also submitted there is no evidence regarding incurring of expenses and hence, on this issue, the order of CIT(A) should be reversed and that of the AO should be restored. Learned AR of the assessee supported order of the CIT(A).

15. We have considered the rival submissions. We find that on pages 10 and 11 of the Assessment Order, it is noted by the AO that in the present year, gross receipt was shown by the assessee at Rs.104.45 lakhs which included admitted income in the form of gold bullion valued at Rs.96.60 lakhs which was found during search and seizure operation. The AO concluded that therefore, the cash income from professional receipts works out to only Rs.6.78 lakhs and hence, the claim of expenses of Rs.52.98 lakhs appears absurd. This is also the finding of the AO that this expense is not supported by verifiable evidences. The AO has also noted that the assessee has furnished ledger copy of purchase, pooja expenses totaling Rs.30,410/- along with ledger, receipt books in the name of Devdas Achar and Ramachandra Shetty. But this is the objection of the AO that the assessee has not furnished any supporting evidence in the form of bills/vouchers. It is also the contention of the AO that the confirmation of Devdas Achar and Ramachandra Shetty is an after thought because they are located in Bramhavar (Kundapur Taluk) and Padubidri (Mangalore), whereas the assessee is staying in Bangalore. This is also the objection of the AO that these 2 persons have not given any detail of their PAN. This addition was deleted by learned CIT(A) after considering the submission of the assessee in which it is stated that additional professional receipts amounting to Rs. 98.60 lacs in the form of Gold bullion was accounted and corresponding expenditure like salary, purchases and pooja expenses, etc., were claimed. This issue was decided by learned CIT(A)

by making following observations on page 11 of his order which are reproduced herein blow for ready reference:-

The Learned assessing officer has summarily disallowed the expenditure of INR 52,98,972/- though the same was properly accounted in the books of accounts. Therefore, it is prayed that the addition of Rs 52,98,972/- may please be deleted."

Further it is noticed that the appellant is belongs to a place called Mulki in Mangalore. As he is into a profession where he can very much purchase the articles from specific suppliers. At the same time it can't be denied that there could be professional receipt in kind. As it was the year of assembly election in Karnataka and the appellant has multiple clients with political connection, the professional receipts in the form of gold coins and bars are justified. At the same time denying the whole expenditure as bogus as well as concluding the fact as no books of accounts available with the appellant is unjustified. Further in the A.Y. 2014-15 the appellant has declared a net profit of around 50% of the professional income as his net profit. Which is quite reasonable. Hence the addition of Rs 52,98,972/- on account of disallowance of expenditure claimed in P/L Account is deleted. In effect, the appeal is treated as allowed. "

13. In the above paras, it is observed by the learned CIT(A) that this was the year of assembly election in Karnataka and the assessee has multiple clients with political connection and hence, the probable receipts of gold coins and bars are justified. It is also noted by the CIT (A) that the net profit of the assessee in the present year is around 50% of professional income alone and it is quite reasonable. But this is also true that no independent evidence regarding this expenditure of Rs.52,98,972/- could be brought on record by the assessee and hence, inflation of expenses cannot be ruled out. Therefore, we feel it proper to confirm the disallowance to the extent of 25% of such expenditure instead of 100% disallowance made by the AO. Accordingly, we confirm the disallowance of Rs.13,24,743/- being 25% of Rs.52,98,972/- and regarding deletion of the balance disallowance, we confirm the order of CIT(A). Accordingly, grounds 6 and 7 are partly allowed.

14. In the result, appeal of the Revenue for Assessment Year 2014-15 is partly allowed.

15. In the combined result, appeal of the Revenue for Assessment Year 2012-13 is dismissed and appeal of the Revenue for Assessment Year 2014-15 is partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 29th January, 2020.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT (A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.