

आयकर अपीलुीय अधलकरण, 'डी' नुयायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH: CHENNAI**

शुी एन.आर.एस. गणेशन, नुयायलक सदसुय एवं  
शुी रमित कुओर, लेखल सदसुय के समकुष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.2188/Chny/2019**

नुधलरण वरुष /Assessment Year: 2011-12

Shri A.N.Muthiah,  
No.5A, II Floor,  
Garden Court Apartments,  
No.5/6, Aspiran Garden, 1<sup>st</sup> Street,  
Kilpauk, Chennai-600 010.

v. The Income Tax Officer,  
Non-Corporate Ward-21(2),  
Aaykar Bhavan, 121,  
M.G. Road, Chennai-600 034.

**[PAN: AAJPM 8551 D]**

(अपीललरुथी/Appellant)

(प्रतुयरुथी/Respondent)

अपीललरुथी कुी ओर से/ Appellant by

: Mr.J.V.Niranjan, Adv.

प्रतुयरुथी कुी ओर से /Respondent by

: Ms.R.Anitha, JCIT

सुनवलई कुी तलरुख/Date of Hearing

: 14.11.2019

कुषणल कुी तलरुख /Date of Pronouncement

: 10.02.2020

**आदेश / O R D E R**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by assessee is directed against appellate order dated 25.04.2019 passed by learned Commissioner of Income Tax (Appeals)-9, Chennai (hereinafter called "the CIT(A)"), in ITA No.30/CIT(A)-9/2014-15 for assessment Year (ay) 2011-12, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 25.03.2014 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, Chennai (hereinafter called “the Tribunal”) read as under:-

*“1. The order of Learned Commissioner is contrary to law, facts and circumstances of the case.*

*2. The learned Commissioner has failed to note that additions can be made only on the basis of entries in the Books of Accounts and the appellant being a salaried employee is not required to maintain any books and thus no books were maintained by him and therefore it follows that no entries could have been made by the appellant in his nonexistent books and this being the case, the assessing officer ought to have known that mere deposits in the Bank Account do not fall within the four corners of the Section 68 of the Act.*

*3. The Learned Commissioner ought to have known that in terms of Section 68, only sums credit to the books of accounts maintained in the previous year is covered in the said section and this being the case, deposits in the bank account is not covered under this section and hence cannot be added to income.*

*4. The Learned Commissioner ought to have known that Pass Book of the appellant is not "books of account" maintained by the appellant and hence invocation of Section 68 is wrong and ought to have set aside the original order, but has instead chosen to confirm the same thereby making his order otiose and hence the same ought to be set aside in limine.*

*5. The Learned Commissioner ought to have appreciated that there is no requirement on part of the appellant to file any wealth tax return and this being the case, non-filing of the same cannot be held against the appellant to negate the substantial contention of the appellant that the cash deposits are made from the proceeds of sale of gold.*

*6. The Learned Commissioner ought to have known that when the CBDT itself allows 500 grams of gold to be held without any records, then the sale proceeds of the said quantity is also exempt from any records and this being the case, it would be a travesty of the law to bring into the ambit of taxation an amount which is outside the scope of law.*

*7. The Learned Commissioner has failed to note the decision of the Hon'ble ITAT in CIT v Bhaichand 141 ITR 67, where in it has been held that the Bank Pass Book is not books of accounts as contemplated in Section 68 of the Act.*

*8. The Learned Commissioner is wrong in his finding that in as much as capital gains tax is not paid on the sale of gold, the same is to be added back as income from other sources in the absence of any enabling provision for the same.*

*9. The Learned Commissioner ought to have known the decision of the ITAT in Shanta Devi v CIT 171 ITR 532 , wherein the conditions precedent for invocation of Section 68 have been laid down and in as much as none of the conditions exist, he ought to have set aside the original order.*

*10. The Appellant craves leave to file additional grounds at the time of hearing.”*

3. Briefly stated facts of the case are that the assessee is an bank employee, drawing income from salary. The case was selected for scrutiny by Revenue under CASS. There was AIR Information regarding cash deposit exceeding Rs. 10,00,000/- viz. Rs. 32,52,142/- in saving bank account of ICICI Bank. During assessment proceedings conducted by AO u/s 143(3) read with Section 143(2) of the 1961 Act, the AO asked assessee, inter-alia, to furnish copies of bank statement, sources of cash deposit in bank accounts and other relevant details. The assessee submitted details for cash deposits in the bank including that some of the amount has come from sale of jewellery. The AO made enquiries with the buyers of jewelries as claimed by assessee by issuing letters for seeking confirmations about genuineness of these transactions of sale of jewelries by assessee to these parties, but letters sent by the AO were either received back with remarks that 'no such person was available at the given address' or no replies were received by AO from these alleged buyers confirming purchase of gold jewellery from assessee, which led AO to make additions for various cash deposits in the bank to the tune of Rs. 9,49,200/- to the income of the assessee in the hands of the assessee, which remains unexplained while rest of cash deposit out of total cash deposits of Rs. 32,52,142/- in SB a/c with ICICI Bank was accepted by the AO, vide assessment order dated 25.03.2014 passed by AO u/s 143(3) of the 1961 Act.

4. Aggrieved by an assessment framed by AO u/s 143(3) of the 1961 Act, the assessee filed first appeal with Ld.CIT(A), who asked AO to verify genuineness of claim of assessee to have deposited cash in his bank account out of sale of jewellery . The learned CIT(A) was pleased to call for remand report from the AO. The AO made enquiries, however, satisfactory explanation could not be obtained and the assessee itself had admitted before AO that Rs. 2,66,000/- out of total additions of Rs.9,49,200/- be treated as unexplained income of the assessee. The Ld.CIT(A) upheld additions as were made by the AO to the tune of Rs. 9,49,200/- by dismissing appeal filed by the assessee , vide appellate order dated 25.04.2019 passed by learned CIT(A), by holding as under:

### **"7.3 CIT(A)'s decision**

*7.3.1 AO stated in the assessment order that there was AIR information regarding cash deposits of Rs.32,52,142/- in the savings bank account with ICICI Bank of the appellant. During the assessment proceedings, AO has examined the sources of cash deposits and added Rs.9,49,200/- as income from other sources as unexplained cash credit. The relevant portion of the assessment order is also reproduced above. As can be seen from para 7.2 above, during the appellate proceedings, initially a remand report was called for and the AO had also submitted the remand report. Subsequently, a supplementary remand report was also sought which was also submitted thereafter, The contents of the letter seeking remand report as well as the remand report received from the AO are reproduced in para 7.2 above.*

*7.3.2 Further, during the appellate proceedings on 23/04/2019 as per this office order sheet noting, Shri Sridharan, CA and Shri A.N. Muthiah, the appellant himself, appeared and stated the following:*

*i) The appellant has never ever filed wealth tax return.*

*ii) The purchase bills of the jewellery sold are not available.*

*iii) The sale of jewellery and the receipt of consideration is only cash and not by cheque.*

iv) The sale of jewellery is only during the year under consideration and not earlier or later years. The sale consideration was utilized to repay the loans and to share brokers partly in cash and partly by cheque.

v) They are not able to establish that the sale of jewellery was-at a rate higher than the market value to these persons.

7.3.3 The findings of the AO as per the assessment order, remand report dated 11/09/2017 and supplementary remand report dated 09/04/2018 have been perused. Further, the written and oral submissions made by the AR and the appellant have also been considered. Following are relevant for deciding the issue under consideration and simultaneously the issue under consideration is also adjudicated as under:

i) During the remand proceedings, AO has caused necessary enquiries and submitted a detailed remand report dated 11/09/2017.; wherein as per the table in page nos.3,4,5&6, AO has pointed out the discrepancy in figures with respect to alleged transaction in jewellery. Further, in the last paragraph of the remand report, in page no.6, AO has also categorically stated that the appellant even failed to give the " address of Mrs. Pramola and Mr. G. Ruben for the amount of Rs.1,50,000/. Further, AO has also stated that Shri S. Balasubramanian and Shri Guru Shankar have denied giving any cash to the appellant towards purchase of jewellery.

ii) A copy of the remand report dated 11/09/2017 was provided to the appellant, seeking his response. In response, on 27/10/2017, the appellant filed a written submission, the relevant portion of which is reproduced hereunder:-

"...3. The assessee accepts for the following additions suggested in the remand report:

<b>Sl.No.</b>	<b>Particulars</b>	<b>Amount</b>	<b>Remarks</b>
1	Deposit on 15/12/2010	17000	In para 1
2	Balasubramanian	49500	In para 3 Sl.No.5
3	Gurushankar	49500	In para 3 Sl.No.6
4	Pramola and G. Ruben	150000	In para 2

The assessee out of Rs.9,49,200/- has no objection for additions mentioned above amounting to Rs.2,66,000/-."

As can be seen from the above written submission, the appellant himself has accepted the addition of Rs.2,66,000/- out of the total addition of Rs.9,49,200/-.

iii) As per the supplementary remand report dated 09/04/2018, AO has stated that from the verification made in respect of sale of jewellery, there was lot of variance between appellant's claim and the information from the

*alleged purchasers (i.e. amount paid, weight of gold purchased etc.). Further, AO has categorically stated that the alleged purchasers could not produce any evidence for payment of cash towards purchases except furnishing confirmation letters.*

*iv) AO has also pointed out that certain parties have categorically denied transactions and the appellant himself admitted the same. Therefore, AO concluded that it is clearly established that the source for cash deposits are not from sale of jewellery as claimed by the appellant and these are income from other sources. Moreover, AO has also stated that entire addition is made as unexplained cash credit, and therefore, there is no question of capital gains for the case under consideration.*

*v) The appellant has categorically stated he has never ever filed wealth tax return. Further, the appellant has also stated that purchase bills of the alleged jewellery sold during the year are not available. Alleged sale of jewellery and receipts of consideration is stated to be in cash and not by cheque. Alleged sale of jewellery is only during the year under consideration and not during earlier or later years.*

*vi) The appellant has stated that the sale consideration was utilized to repay the loan and also to pay the share brokers, partly in cash and partly by cheque. It is also pertinent to mention here that no such income from shares are declared in the return of income and the repayment of loan by cash also attracts various penalty provisions as per the Act. Further, the appellant has not furnished any documentary evidence with respect to the utilization of the alleged sale consideration towards repayment of loan and payments made to share brokers.*

*vii) The appellant has not sold any jewellery to any registered dealer or a shop dealing with gold jewellery. There is no contemporary evidence that alleged sale and purchase is recorded by the alleged purchase parties by way sales tax returns, etc.*

*viii) During the course of appellate proceedings, it was stated that these jewelleries were allegedly sold to various individuals, however, the appellant was not able to establish sale of jewellery to these persons was at a rate higher than the market rate. Under normal circumstances, if anyone wishes to sell jewellery, it would be sold to a dealer or shop who is dealing in gold jewellery. Moreover, AO has rightly pointed out the discrepancy with respect to the amounts as well as weight of jewellery in respect of certain parties and certain parties have also categorically denied transaction. Wherever parties have denied the transaction, appellant, himself has accepted the same as undisclosed income of the appellant. However, wherever there are certain discrepancy and source of cash payments was not explained by the concerned persons, the appellant has not accepted the same as undisclosed income.*

*ix) The appellant himself has accepted undisclosed income of Rs.2,66,000/- after lot of efforts by the Department both during the assessment proceedings as well as during remand proceedings. It is only*

when the appellant was cornered with contradictions ascertained out of the enquiries made, the appellant had admitted the said income of Rs.2,66,000/-.

x)The appellant has never ever filed wealth tax return and also does not have the purchase bills for the alleged jewellery sold during the year. On perusal of documents on record, it is seen that the appellant has sold jewellery to the extent of 382.93 gm. In this regard, the CBDT's Instruction No.1916 dated 11/05/94 is relevant which is reproduced hereunder:

"Instances of seizure of jewellery of small quantity in the course of operation under section 132 have come to the notice of the Board. The question of a common approach to situation where search parties come across items of jewellery has been examined by the Board and following guidelines are issued for strict compliance:

i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need to be seized.

ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms per married lady 250 gms per unmarried lady and 100 gms per male member of the family need not be seized...."

As can be seen from the above instruction of CBDT, the CBDT itself has laid some benchmark of possessing 100 gm per male member wherever wealth tax return is not filed. Therefore, the appellant's contention that he sold 382.93 gm during the year under consideration for which no details of earlier purchases are available cannot be accepted to be correct.

xi) In this regard, reliance is also placed on the decision of the Hon'ble Supreme Court of India in the following cases:

1. CIT Vs. Durga Prasad More 82 ITR 540 (SC)
2. Sumati Dayal Vs. CIT 214 ITR 801 (SC)
3. CIT Vs. P. Mohanakala 291 ITR 278 (SC)

The Hon'ble Supreme Court while dealing with principles of preponderance of probabilities has held that certain transactions cannot be just accepted on the face value and one has to analyse the preponderance of probabilities based on all the facts and circumstances of the case under consideration.

xii) In case the contention of the appellant regarding sale of jewellery is to be accepted, still it is not understood as to why the appellant has not declared capital gain/capital loss on account of alleged sale of jewellery. This itself goes to establish that the appellant has not actually sold jewellery and in case the appellant has sold jewellery, he would have

*declared capital gain/capital loss as per the income tax return. It is also pertinent to mention here that the return of income filed is duly verified and even prosecution proceedings could be initiated for wrong verification of Income-tax return. Therefore, this also goes to establish that the appellant has not earned any capital gain/capital loss on account of sale of jewellery.*

*xiii) As stated by the AO in the supplementary remand report, the appellant has not discharged primary onus cast upon him u/s 68 of the Act as the source of cash paid by the alleged purchasers have not been established.*

*xiv) As the primary onus cast upon the appellant of establishing the source of cash allegedly received is not established, it is held that the AO has rightly treated these receipts as unexplained cash credit.*

*7.3.4 In view of the above discussion and also after considering all the facts and circumstances of the case under consideration and the principles of preponderance of probabilities, it is held that the alleged transaction in jewellery is a sham transaction which is also partly accepted by the appellant to the extent of Rs.2,66,000/-. In view of these facts, it is held that the AO has rightly added Rs.9,49,200/- as unexplained cash credit. Therefore, this ground of appeal is dismissed."*

5. Aggrieved by an aforesaid appellate order passed by learned CIT(A), the assessee filed second appeal with tribunal. The learned counsel for the assessee contended that there is a gap of six years in recording of statements by the AO of the buyers of jewellery, during remand report proceedings conducted at behest of directions of learned CIT(A) and hence, satisfactory explanation could not be provided. The learned counsel for the assessee explained that assessee is salaried employee with ICICI Bank and there is no requirement for assessee to maintain books of accounts. The Ld.DR, on the other hand, submitted that detailed enquires were made by Revenue and assessee could not satisfactorily explain sources of cash deposits. The learned DR would argue that assessee himself admitted that Rs. 2.66 lakhs should be added to the

income of the assessee as he could not explain the sale of jewellery to that extent. It was submitted by learned DR that enquiries made with several parties to whom assessee has claimed to have purportedly sold jewellery have denied to have purchased jewellery from the assessee. Some of notices sent to these parties have returned back and some of the parties have denied to have purchased jewellery from the assessee. It was submitted that assessee has claimed to have sold 382.93 grams of gold jewellery . It is submitted by learned DR that said gold jewellery was not declared in Wealth Tax Return . It was submitted by learned DR that this claim of gold jewellery is an afterthought as assessee was cornered by Revenue in scrutiny proceedings . It was submitted by learned DR that information was received by AO through AIR that more than Rs. 32 lakhs was deposited in cash in saving bank account by the assessee in his bank account .

6. We have considered rival contentions and perused material on record. We have observed that assessee is a salaried employee with ICICI Bank. The case of the assessee was selected for framing scrutiny assessment under CASS. There was AIR information with AO that assessee has deposited Rs. 32,52,142/- in cash in his saving bank account maintained with ICICI Bank , during the year under consideration. The assessee was asked by AO to explain sources of cash deposits in his bank account. The assessee could not satisfactorily explain sources of cash deposits to the

tune of Rs.9,49,200/- in his bank account during assessment proceedings, which led AO to make additions to the income of the assessee which were later confirmed by learned CIT(A). The enquiries were made by AO in assessment proceedings as well as in the remand proceedings conducted by the AO as directed by learned CIT(A), wherein most of the parties denied to have transacted to have purchased jewellery from assessee or satisfactory explanation was not forthcoming from these alleged buyers . Some of the parties could not be located. The assessee itself admitted that Rs. 2,66,000/- out of total additions made of Rs. 9,49,200/- be added to his income as unexplained cash deposit in his bank account. It is pertinent to mention that assessee had not declared any capital gain earned on sale of jewellery in return of income filed with Revenue. We have also observed that assessee has not filed any Wealth Tax Return with the Department nor any evidence is filed as to declaration of the said jewellery in return of income r filed with Revenue for this year or for earlier assessment years and the said gold jewellery of 382.93 grams were never disclosed by assessee to the Department. The assessee also could not produce purchase bills for purchase of the jewellery to the tune of 382.93 gms. The sale of the jewellery as claimed by assessee to have been made during the year under consideration was not to registered gold jewelers but were all claimed to be made to private individuals. The sale consideration for the entire sale of jewellery as claimed by assessee was in cash and none of the party paid sale consideration through banking

channel. Thus, in our considered view keeping in view totality of circumstances on the touch stone of preponderance of probabilities, the entire transaction for sale of gold jewellery is an afterthought and a sham transaction which is claimed by assessee as he was cornered by Revenue. Thus, we hold that assessee could not satisfactorily explain transactions for sale of gold jewellery. The amounts were deposited in cash in the bank account maintained by assessee and onus was on assessee to satisfactorily explain sources of cash deposit in his bank account which in the instant case, the assessee failed to satisfactorily explain and Section 68 is clearly applicable. Reference is drawn to decision of Hon'ble Punjab and High Court in the case of Sudhir Kumar Sharma (HUF) v. CIT reported in (2014) 46 taxmann.com 340(P&H HC) . The Hon'ble Supreme Court dismissed SLP filed against aforesaid decision of Hon'ble Punjab and Haryana High Court which is reported in (2016) 69 taxmann.com 219(SC). However, vide CBDT instruction number 1916 dated 11.05.1994 which stipulates that in case of male member , 100 grams of gold jewellery could be treated as held explained , we give benefit of the aforesaid CBDT instruction to the assessee in terms of aforesaid CBDT instruction, while rest of the sale of jewellery as claimed by assessee could not be accepted and the sale consideration of 282.92 grams of gold jewellery as claimed by assessee is to be held as unexplained as income from undisclosed sources in the hands of assessee which is to be brought to tax in the hands of assessee. However, the assessee will be required to pay tax on capital gain arising from sale of said 100 gm of gold jewellery

as per provisions of the 1961 Act. The AO is directed to bring capital gains on sale of 100 gm of jewellery to tax in the hands of assessee in accordance with law, while rest of sale consideration is to be brought to tax as unexplained income. The assessee is directed to file before AO computation for working of capital gains on sale of 100 gms of gold jewellery , for verification by the AO. The matter is remanded to AO to that effect. The AO shall provide proper and adequate opportunity of being heard to the assessee. We order accordingly.

7. In the result, the appeal filed by the assessee in ITA No. 2188 /Chny/2019 for ay: 2011-12 is partly allowed as indicated above.

Order pronounced on the 10<sup>th</sup> day of February, 2020 in Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 10<sup>th</sup> February, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF