

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 5932/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

Mrs. Rupali Bhavesh Gandhi, C/o- Skil House, 209, Bank Street Cross Lane, Fort, Mumbai-400 023	<u>बनाम/</u> Vs.	ACIT CC-38, Now DCIT CC – 6(3), 19 th floor, AIR India Bldg, Nariman Point, Mumbai-400 021
स्थायीले खासं./जीआइआरसं./PAN No. AEIPG4028E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकरअपीलसं./ I.T.A. No. 5933/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

Mrs. Neha Nikhil Gandhi, C/o- Skil House, 209, Bank Street Cross Lane, Fort, Mumbai-400 023	<u>बनाम/</u> Vs.	ACIT CC-38, Now DCIT CC – 6(3), 19 th floor, AIR India Bldg, Nariman Point, Mumbai-400 021
स्थायीले खासं./जीआइआरसं./PAN No. AALPG7324G		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Mihir C. Naniwadekar/Ruturaj H. Gurjar, ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Awangshi Gimpson, DR
सुनवाईकीतारीख/ Date of Hearing	:	18.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	13.03.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present two appeals have been filed by different assesseees against the order of Ld. Commissioner of Income Tax (Appeals)-54, Mumbai, dated 21.06.16 and 14.06.16 for AY 2012-13 respectively.

2. Since the issues raised in both appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order.

3. Firstly, we are taking ITA No. 5933Mum/2016 for AY 2012-13 filed by the assessee on the grounds mentioned herein below:-

1. *On facts & circumstances of the case and in law the learned CIT(A) has erred in confirming the addition made by the AO on account of unexplained jewellery of Rs.27,08,894/-. The addition made on this account should be deleted.*

2. *On facts & circumstances of the case and in law the learned CIT(A) has erred in upholding the addition made by the AO of Rs.13,50,063/- in respect of under the head income from house property in respect of the appellant's share of 50% in the flat at H-3 Breach Candy Apartments and 25% share in Sagar Villa, which was estimated by the AO. The CIT(A) further erred in rejecting the appellant's argument that since the properties were co-owned and the co-owner having occupied the same, the ALV of the property was Rs. NIL. Without prejudice to the above, the ALVs estimated by the AO in respect of the appellant's share in the properties are excessive.*

3. *The appellant reserves her rights to add to, alter, amend, modify or delete any of the grounds taken up in this appeal.*

4. With regard to Ground No. 1, the brief facts of the case are that assessee filed original return of income on 19.10.12 declaring total income of Rs. 16,48,550/- and the same was processed u/s 143(1) of the Act on 10.12.13. Subsequently, a search and seizure operation was carried out u/s 132 of the Act on 12.10.11 on M/s Pipavav Defence and Offshore Engineering Co. Ltd. (PDOECL), its group concerns and key persons. During the course of search in the premises of the assessee, jewellery were found in her lockers. The main issue is that the department found 991.510 gms of jewellery and according to assessee, the said jewellery includes 406.76 gms which stood disclosed in the hands of her husband Shri. Bhavesh P. Gandhi which was already declared in its regular wealth tax returns. Similarly, the diamond jewellery of Rs. 13,47,023/- owned by her husband stood included in his wealth tax return. Therefore, the above said jewellery were part of her husband taxable wealth. In support of the above contention,

assessee filed wealth tax return of AY 2010-11 and 2011-12 of her husband.

5. After considering the submission of assessee, AO observed that the wealth tax return for AY 2010-11 filed by her husband is not discernible and further observed that assessee has not also filed the relevant purchase bills and explained the source of such investments. According to AO, the authenticity and credibility of the wealth tax return filed for AY 2010-11 cannot be accepted as the same was filed on 30.03.13 as per acknowledgement in the above said return. Therefore, this was filed after the search operations, accordingly AO rejected the above said evidences and proceeded to make addition in the hands of the assessee.

6. Aggrieved by the above, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) sustained the addition made by AO with observation that the record suggest that no such claim was made by the assessee during the course of search proceedings. Further Shri Bhavesh P. Gandhi was also searched alongwith assessee and no such claim was made by Shri Bhavesh P. Gandhi during search proceedings that 406.76 gms of gold jewellery and

diamond jewellery worth Rs. 13.47 lakhs belonging to him and kept with his wife i.e. assessee and the same was already reflected in his wealth tax return filed by him. Even during the course of post search enquiry and assessment proceedings, Shri Bhavesh P. Gandhi has not filed any confirmation /affidavit in this regard. In absence of such confirmation, the claim of the assessee remains unsubstantiated and hence cannot be accepted. He further observed that from perusal of the assessment order in the case of Shri Bhavesh P. Gandhi for AY 2012-13, it is observed that AO made protective addition on account of unaccounted investment in gold and diamond jewellery, since the same was added on substantive basis in the hands of the assessee, no addition on account of above said investment was made substantive basis in the hands of Shri Bhavesh P. Gandhi. Since the above investment sought to be explained by Shri Bhavesh P. Gandhi cannot be allowed as credit in the hands of the assessee. Accordingly, dismissed the grounds raised by the assessee. Aggrieved with the above order, assessee is in appeal before us.

7. Considering the rival submissions and material placed on record, we notice from the record that during search proceedings, gold and diamond jewellery were found in the possession of the assessee. During the assessment proceeding, assessee made submission that gold and diamond jewellery belongs to her husband Shri Bhavesh P. Gandhi and Shri Bhavesh P. Gandhi has already disclosed the same in his wealth tax return and also submitted that Shri Bhavesh P. Gandhi is regularly filing wealth tax return. We notice from the submission made by Ld. AR that valuation carried out by assessee as well as by the department are from the same valuer and the same quantity and thereafter valuation was done. Further, Ld. AR brought to our notice the wealth tax return filed by Shri Bhavesh P. Gandhi which is placed on record at page 60 for AY 2010-11 and at page 55 of AY 2011-12. On verification of the same, we notice that it is not clear from the return filed by the assessee on which date it was filed. However, we notice that assessee has recorded by hand the details of bank statements and the date mentioned is 28.03.11, therefore in our considered view, it must have filed on 28.03.11 or subsequently. Since the search

and seizure operation was conducted on 12.10.11, but at the same time as per the record submitted before us, it shows that assessee might have filed this document prior to search proceedings. Apart from that nothing was brought on record before us in support of the contention that the wealth tax return was submitted prior to search proceedings. We observe that there is only one note that since Form-B was filed with the department and the same was filed manually not through electronic mode. However, we notice from record that revenue authorities have not taken any effort to verify the genuineness of the assessee's claim by verifying the wealth tax records to prove that it is not filed by assessee. Considering the overall situation and assessee could not substantiate the filing of wealth tax return and not declared the facts at the time of search proceedings. Assessee should be given some benefit of doubt. Accordingly, we direct the AO to grant benefit of doubt to the assessee at least to the extent of 25%. Accordingly, AO is directed to restrict the disallowance to 75%. Hence, ground raised by the assessee is **partly allowed**.

8. With regard to Ground No. 2, the brief facts are that assessee and her husband Shri Bhavesh P. Gandhi had jointly purchased flat No. H3 on 8th floor of the Breach Candy Apartments and the assessee share in the above property is 50% as per the balance sheet. The assessee has also another flat in the same building D-4 on the 7th floor. From the records, it is seen that Flat no. D-4 has been treated as self occupied property. As regards Flat H3 has been let out to M/s Pipavav Shipyard Ltd as per record for AY 2006-07 and rent of Rs. 6,61,298/- was received. Therefore, the net annual value was declared at Rs. 6,61,298/- and after deduction u/s 24(a), the income of the property was declared at Rs. 4,62,909/-. The AO observed that the above said flat was let out for 11 months and AO noticed that the total income as per computation, assessee has not declared any income from house property, even though assessee continue to be in possession of 2 flats. Accordingly, AO estimated the monthly rental income of Rs. 1 lakh per month and brought to tax 50% of the rental income after giving deduction u/s 24(a) to the extent of Rs. 8,40,000/-. Similarly, additions were made on the property at Sagar Villa and in that property, assessee was holding

25% of the share, therefore 25% of the share determined by the AO at Rs. 5,10,653/-.

9. Aggrieved by the above, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) sustained the addition made by AO. Aggrieved with the above order, assessee is in appeal before us.

10. At the time of hearing, Ld. AR of the assessee brought to our notice similar issue in the case of assessee's husband Shri Bhavesh P. Gandhi, the Hon'ble ITAT in its AY 2008-09, 2011-12 & 2012-13 remitted the matter back to the AO to do the assessment afresh, therefore he prayed that this issue also be remitted back to the AO for fresh consideration.

11. On the other hand Ld. DR relied on the orders passed by the revenue authorities.

12. Considering the rival submissions and material placed on record, we notice that similar issue has already been decided by the Coordinate Bench of ITAT in the case of assessee's husband Shri Bhavesh P. Gandhi in ITA No. 6579, 6581 & 5930/Mum/16 and for the sake of clarity, which is reproduced below:-

9. We have considered rival contentions and carefully gone through the orders of the authorities below and found that addition pertains to estimation of rateable value in respect of the joint property at Sagar Villa. The assessee along with his father - Mr. Prataprai Gandhi, sister-in-law Mrs. Neha Nikhil Gandhi & spouse - Mrs. Rupali B. Gandhi, are joint owners in equal proportion in the said property. The property in question was fully occupied by the assessee's father-in-law, as self-occupied property and the assessee was not let out the same.

10. Learned AR placed on record the order of the Tribunal in case of another family member in ITA No.6582/Mum/2016 and 6578/Mum/2016 for the very same assessment year 2010-11 and 2011-12 order dated 08/10/2017, wherein under similar facts and circumstances, the Tribunal has restored the matter back to the file of the AO after having the following observation.

“We have considered the rival submission of the parties and have noted that the AO while framing the assessment order made the addition under the head 'Income from House Property' on the basis of estimation. The Assessing officer has not made any independent enquiry before making the addition. The order passed by assessing officer is not in

accordance with the provisions of section 23 of the Act. Thus, considering the facts of the case and the submission of both the parties, the ground of appeal raised by assessee is restored to the file of AO with the direction to pass the order afresh after considering the decision of jurisdictional High Court in case of CIT vs. Tip Top Typography (supra). Needless to say that before passing the order, the AO shall grant opportunity of hearing to the assessee.”

11. As the facts and circumstances during the years under consideration are same, we restore the matter back to the file of the AO for deciding afresh in terms of the decision of the Tribunal referred above as well as the order of the jurisdictional High Court in case of Tip Top Typography (supra).

12. In the result appeals of the assessee are allowed for statistical purposes.

13. Therefore, respectfully following the above decision of ITAT which is applicable *mutatis mutandis* in the present case, we remit this matter back to the file of AO for deciding afresh. Accordingly, the ground raised by the assessee is **allowed for statistical purposes.**

14. Since the facts in other ITA No. 5933/Mum/2016 for AY 2012-13 are similar to the facts of above appeal i.e. ITA No. 5932/Mum/2016, therefore, the grounds raised in these appeals are also **partly allowed**.

15. In the net result, both the appeals filed by the different assessee stand **partly allowed**.

Order pronounced in the open court on 13th March 2020.

<i>Sd/-</i> (Saktijit Dey) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 13.03.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

- 1 अपीलार्थी/ The Appellant
- .
- 2 प्रत्यर्थी/ The Respondent
- .
- 3 आयकरआयुक्त(अपील) / The CIT(A)
- .
- 4 आयकरआयुक्त/ CIT- concerned
- .
- 5 विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR,
ITAT, Mumbai
- .

गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai