

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5550/MUM/2012
Assessment Year: 2003-04**

Jayant B Patel, B/27, Clifton Society, Near Centuar Hotel, Juhu Vile Parle (W), Mumbai - 49 PAN: AACPP6414H	Vs.	The ACIT- CC-13, 10 th Flr, CGO, Churchgate, Mumbai - 20
(Appellant)		(Respondent)

Assessee by : Shri V. Chandra Sekhar (AR)
Revenue by : Shri Rahul Raman (CIT DR)

Date of Hearing: 25/06/2020
Date of Pronouncement: 31/07/2020

ORDER

PER RAM LAL NEGI, JM

The "J" Bench of the Tribunal passed the common order dated 10.08.2016 in the captioned appeal other appeals of the assessee pertaining to the earlier and subsequent assessment years. However, the Tribunal vide order dated 03.05.2017, passed in MA 117-23/Mum/2017 recalled order dated 10.08.2016 for limited purpose of adjudicating Ground No. 5 of the appeal pertaining to the assessment year 2003-04 for the reason that the Tribunal has not adjudicated Ground No. 5 of the appeal with regard to addition of Rs. 5,68,942/- on account of sale of gold jewellery. The ground No. 5 of the appeal reads as under:-

"5.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making the addition of Rs. 5,68,942/- to the income of the Appellant on account of alleged unexplained/unaccounted jewellery.

5.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.”*

2. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has wrongly sustained the addition of Rs. 5,68,942/- on account of alleged unexplained/unaccounted jewellery. The Ld. counsel pointed out that the Tribunal has deleted the addition made in respect of gifts received by the assessee in 2003-04 and 2004-05 basically on the ground that no incriminating material was found during search. The Tribunal has decided said issue by following the ratio laid down by the Hon'ble Mumbai High Court in the case of *Continental Warehousing Corporation (Nhava Sheva)* 374 ITR 645, decision of the Delhi Bench of the Tribunal in the case of *Jakson Enterprises*, ITA No. 383/Del/2013, decision of Jodhpur Bench of the ITAT in the case of *Vishal Dembla* 40 taxmann.com 134, decision of the Mumbai Bench of the Tribunal in the case of *Jayendra P Jhaveri* 46 taxmann.com 457 and the decisions of the other Benches of the Tribunal. The Ld. counsel further pointed out that since no incriminating documents were recovered during the course of search in respect of the alleged unexplained/ unaccounted jewellery, the findings of the Ld. CIT(A) is bad in law, therefore liable to be set aside.

3. On the other hand, the Ld. Departmental Representative (DR) fairly admitted that the Tribunal has deleted the addition confirmed by the Ld. CIT (A) on account of bogus gifts pertaining to the assessment year 2003-04 and 2004-05 on the ground that no incriminating material was recovered during the course of search. The Ld. DR, however, supported the order passed by the Ld.CIT (A).

4. We have heard the rival submissions of the parties and perused the material on record including the order of the Tribunal passed in assessee's appeals referred above. The AO made addition of Rs. 10,30,933/- on account of unaccounted sale of gold jewellery holding that the assessee has been able to provide the source of gold to the extent of 3984.7 grams by way of VDIS documents and bills. However, the assessee has failed to explain the source of balance jewellery weighing 2297.6 grams. In the first appeal, the Ld. CIT (A)

restricted the addition to Rs. 5,68,942/- holding that there is merit in the claim made by the appellant that overall gold jewellery found during the course of search should be compared with jewellery claimed to be kept with the appellant after the sale made in the year 2003-04. We further notice that the authorities below have not mentioned in their orders that any incriminating material was recovered from the assessee during the course of search. Since, the Tribunal has deleted the addition made on account of the alleged bogus gifts on the ground that no incriminating material was recovered during the search, consistent with our findings, we delete the addition of Rs. 5,68,942/- made on account of unexplained jewellery sustained by the Ld. CIT (A) for the same reason that no incriminating material was recovered during the course of search. Hence, we set aside the findings of the Ld. CIT (A) and decide the sole ground of appeal in favour of the assessee. Accordingly, we direct the AO to delete the addition of Rs. 5,68,942/- sustained by the Ld. CIT (A).

In the result, appeal filed by the assessee for assessment year 2003-2004 is allowed.

Order pronounced on 31st. July, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 31/07/2020

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**