

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.4507/Del./2017
Assessment Year: 2014-15

DCIT, Central Circle-25, New Delhi	Vs.	Smt. Ginni Devi, E-270, Shastri Nagar, New Delhi
PAN :ACCPD2043E		
(Appellant)		(Respondent)

AND

ITA No.4484/Del./2017
Assessment Year: 2014-15

Smt. Ginni Devi, E-270, Shastri Nagar, New Delhi	Vs.	DCIT, Central Circle-25, New Delhi
PAN :ACCPD2043E		
(Appellant)		(Respondent)

Department by	Ms. Sunita Singh, CIT(DR)
Assessee by	Shri Hiren Mehta, CA

Date of hearing	06.01.2021
Date of pronouncement	14.01.2021

ORDER

PER O.P. KANT, AM:

These cross appeals by the Revenue and the assessee are directed against order dated 28/04/2017 passed by the Ld.

Commissioner of Income-tax (Appeals)-29, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2014-15.

2. The grounds raised by the Revenue in the appeal No. 4507/Del/2017 are reproduced as under:

1. *That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in law as well as facts in deleting the addition of Rs.1,43,15,701/- made by Assessing Officer on account of unexplained jewellery.*
2. *That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in law as well as facts in deleting the addition of Rs.6,22,637/- made by AO on account of Commission Income.*
3. *That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in law as well as facts in deleting the addition of Rs.12,53,36,332/- made by AO on account of unexplained investment from undisclosed sources.*
4. *That the grounds of appeal are without prejudice to each other.*
5. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal before or at the time of hearing of the appeal.*

2.1 The grounds raised by the assessee in appeal No. 4484/Del/2017 are reproduced as under:

1. *That on the facts and circumstances of the case and in law, the order passed by CIT(A)-29, New Delhi [hereinafter referred to as CIT(A)], is bad in law.*
2. *That on the facts and circumstances of the case and in law, the CIT(A) was not justified in partly upholding the action of the AO by sustaining addition of Rs.5,76,580/- on account of unexplained jewellery found from the premises R-4 during search action out of total jewellery aggregating Rs.1,48,92,281/-.*
3. *That the appellant craves leave to add, alter, amend, modify any of the grounds of appeal at the time of hearing of earlier.*

3. Briefly stated facts of the case are that, the assessee on individual filed return of income for the year under consideration, i.e, AY 2014-15 , under section 139(1) of the Income-tax Act,

1961 (in short 'the Act') on 31/01/2015, declaring total income of ₹26,40,665/-. In the case of the assessee, the search and seizure action under section 132 of the Act was carried out on 15/10/2013. Consequently, the scrutiny assessment proceedings were commenced for the year under consideration and statutory notices under the Act were issued. Initially, the assessee did not comply the notices, however, subsequently, filed part replies. The Assessing Officer accordingly, completed assessment under section 144 of the Act as 'best judgment' assessment and made following additions:

1. Addition under section 69A of the Act for unexplained jewelry of ₹ 1,48,92,281/- found during the course of the search.
2. Unexplained investment of ₹ 12,53,36,332/- in purchase of the shares of group concerns
3. Unexplained credit entries in bank statements held as accommodation entries and addition of Rs.6,22,637/- made for commission for obtaining accommodation entries at the rate of 0.5% of the credit entries of ₹ 12,45,427,419/- in bank accounts.
4. Addition made on protective basis for undisclosed income of ₹ 7,96,234/- on account of unaccounted sale of the jewellery outside books of group concern declared before the Settlement Commission.

3.1 Aggrieved with the additions made, the assessee filed appeal before the Ld. CIT(A). The assessee informed the Ld. CIT(A) that

her application filed before the Settlement Commission for assessment years 2008-09 to 2014-15 had been rejected. The Ld. CIT(A) after considering submission of the assessee, allowed the appeal partly. Aggrieved with the impugned order of Ld. CIT(A), both the Revenue and the assessee are before the Income Tax Appellate Tribunal (in short the 'Tribunal') raising the grounds as reproduced above.

4. The parties appeared before us through Videoconferencing facility.

5. The ground No. 1 of the appeal of the Revenue and ground No. 2 of the appeal of the assessee are interconnected. The brief facts qua the issue in dispute are that the assessee Smt. Ginni Devi and her husband Sh. Jai Singh were residing with their son Sh. Praveen Gupta and daughter-in-law Smt. Jyoti Goyal at their residential premises. During search action, total jewellery amounting to ₹ 2,87,46,496/- was found from rooms of the assessee and her daughter-in-law, which was valued by the Departmental Valuer as under:

Ginni Devi : ₹ 1,48,92,281/-

Jyoti Goel : ₹ 1,38,54,216/-

5.1 The assessee explained before the Assessing Officer that jewelry aggregating to ₹ 1,68,93,253/- and ₹ 1,29,13,500/- and ₹ 87,352/- was issued for approval in the name of Praveen Gupta and Jyoti Goel from the showroom of Shree Raj Mahal Jewellers Ltd. i.e. a family concern. The assessee filed copy of approval notes issued by the said concern. The assessee submitted that soft copy of those approvals notes were seized during the course of the search by the Income Tax Department. Further, the

assessee explained that certain items of the jewellery were received at the time of the marriage and other occasions from friends and relatives. The assessee also contested that valuation of the jewellery had been made on the higher side. The Learned Assessing Officer rejected the claim of the assessee that jewellery found from her room was acquired on approval from the family concern. First ground of the rejection was that keeping jewellery on approval for a period of five months (May, 2013 to October, 2013), cannot be held as normal. Second, ground of rejection was that approval notes are in the name of Sh. Praveen Gupta and his wife and not in the name of the assessee, whereas jewellery was found in possession of the assessee. The Assessing Officer asked wealth tax return of the assessee and in failure to do so, he held the jewellery found from the room of the assessee as unexplained and made addition of ₹ 1,48,92,281/-.

5.2 The Ld. CIT(A) after verifying the valuation report along with the approval slips held that the jewellery worth ₹ 5,76,580/- was not reconciled and, therefore, he sustained the addition of ₹ 5,76,580/-. The Learned CIT(A) rejected the arguments of the assessee that jewellery was received on marriage and other functions and valuation was made on the higher side. The relevant finding of the Learned CIT(A) is reproduced as under:

“7.2 I have gone through the valuation report, approval slips and the chart prepared by the appellant, which is also annexed as a part of this order. The description as per valuation report for various items of jewellery has been tallying with the approval challans, issued on different dates, which is taken on 30.05.2013, looking to the change in software, as explained by the appellant. Since, the piece of jewellery has been duly reconciled and even the weight in different items are near to that of jewellery found during search as mentioned in the valuation report, therefore there is no reason to consider this jewellery as a part of jewellery received on approval from M/s Shri Raj Mahal Jewellers P.

Ltd., though in the name of family members of appellant i.e. son and daughter in law. Further, the AO has not brought on record any corroborative evidence to show that this jewellery does not relate to the jewellery showroom M/s Shri Raj Mahal Jewellers Ltd. and her own jewellery, which is undisclosed.

7.3 However, it is observed from the chart that various items found during search, as mentioned in S.NOs. 14,20, and 29, amounting to Rs.5,76,580/- could not be reconciled by the appellant, nor substantiated the source of such jewellery items. Therefore, the source of funds or investment towards those jewellery remain unexplained and accordingly in the absence of any reasonable evidence, the addition to the extent of Rs.5,76,580/- is sustained. In fact the difference in gross weight and net weight between valuation report and approval challans is due to the fact that appellant could not substantiate the source of above jewellery.

7.4 The plea of the appellant that the jewellery received during marriage etc. has not been substantiated by providing any evidence or any bank statement or any valuation report or wealth tax return by appellant in past. Therefore, no evidence is brought on record by appellant in this regard and accordingly not palatable.

7.5 The appellant has also argued that valuation has been done on the higher side by authorized valuer during the search. However, no further details in this regard has been provided by appellant to show that there has been inflated valuation of jewellery found during the search. It is also observed that during search or post search proceedings no such issue has been raised or substantiated to show that jewellery has been priced higher by the approved valuer. Since the jewellery has been found, not duly accounted for in the hands of appellant, therefore value has to be taken as per the existing rate, at the time of search. Further, the appellant has provided chart indicating the value of jewellery where the total value of jewellery on the date of issue has been found more than what has been valued by the approved valuer. Therefore, this argument of the appellant is not duly substantiated and actually contradicted by her own submission and hence cannot be considered.

7.6 Therefore, as discussed in the foregoing paragraphs, the addition amounting to Rs.5,76,580/- is sustained and the balance is allowed as relief. This ground of appeal is partly allowed.”

5.3 Before us, the Learned Counsel of the assessee referred to reconciliation chart annexed with the impugned order and submitted that Ld. CIT(A) has accepted the source of jewellery found from the room of the assessee in view of the approval notes

issued by the family concern after item -wise reconciliation of jewellery found in search along with the jewelry issued on approval except the jewellery of ₹ 5,76,580/-, which according to the Learned Counsel of the assessee, was received at the time of the marriage and other functions.

5.4 The learned DR, on the other hand, submitted that appellate proceeding in the case of business activities of the group are pending before the Ld. CIT(A), therefore, adjudication on the issue in dispute, may be decided after the order of the Ld. CIT(A) in those cases. Alternatively, the learned DR also submitted that it was not clear whether the jewellery stated to be issued on approval notes, was part of the stock of the jewellery of the said family concern. She submitted that it is required to be ensured that said jewellery was not shown as sold in the books of accounts of M/s Raj Mahal Jewellers Pvt. Ltd. She accordingly submitted that issue-in-dispute may be sent back to the file of the Assessing Officer for verification.

5.6 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute involved is source of acquisition of the jewelry of ₹ 1,48,92,281/- found from the room of the assessee. The assessee has explained that major part of the jewellery was received on approval from her family concern, M/s Raj Mahal Jewellers Private Limited and remaining part of the jewellery was received by her on her marriage and other functions. But we have noticed from the order of the lower authorities that the assessee group opted to settle its cases before the Settlement Commission, but their application was twice rejected. The Ld. CIT(A) in para 12 of

the impugned order has reproduced submission of the assessee, where in the group concerns have accepted sale of jewellery out of books of account. Therefore, it needs to be ascertained whether the jewellery in dispute is included in the jewellery sold out of books of account. From the facts recorded by the lower authorities, it is not clear whether the jewellery stated to be issued on approval, was forming part of the stock of M/s Raj Mahal Jewellers Private Limited as on the date of the search. In absence of such a finding of the fact, the jewellery found from room of the assessee cannot be treated as explained merely by presenting approval notes. In the facts and circumstances of the case, we feel appropriate to set aside the finding of the Learned CIT(A) and restore the matter back to the file of the Assessing Officer for verifying source of acquisition of the jewellery with following directions:

1. To verify whether the approval notes form part of the seized record.
2. To verify whether the challans of jewellery issued and presented by the assessee before the AO also forms part of the seized record.
3. If the approval notes and challans form part of the seized record, then to verify and reconcile the details of the jewellery provided in the valuation report with the details provided in approval notes like name of the customer, name of the item of the jewelry, gross and net weight etc.
4. If the jewelry mentioned in the valuation report reconcile with the approval notes, then to verify whether the jewelry items form part of the stock appearing in the books of

accounts of M/s Raj Mahal Jewellers Private Limited found and seized during the course of search action.

5.7 The Assessing Officer may also carry out any other inquiries or verification deem fit in the facts and circumstances of the case and ensure that reconciliation is done with genuine evidences found during the course of the search action. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard.

5.8 In the result, the Ground No.1 of the appeal of the Revenue and Ground No. 2 of the appeal of the assessee are allowed for statistical purposes.

6. The Ground No. 2 of the appeal of the Revenue relates to the addition of ₹ 6,22,637/- made on account of commission income for obtaining accommodation entries.

6.1 The brief facts qua the issue in dispute are that the Assessing Officer observed huge amount of credits in two bank accounts maintained with 'Federal Bank Ltd.' and 'Karnataka Bank Ltd.' respectively. No details were submitted by the assessee in respect of the debit and credit entries of those bank accounts. According to the Assessing Officer, the group concerns have admitted in statement of facts filed before the Settlement Commission of having engaged in providing accommodation entries and bank account of the assessee had been used for routing accommodation entries of the group. Accordingly, he treated the commission at the rate of 0.5% on the entire amount of the credit of ₹ 12,45,27,490/- in those two bank accounts, and worked out the commission income of ₹ 6,22,637/- which, was

held as undisclosed income of the assessee. The Ld. CIT(A) deleted the addition observing as under:

“11. I have gone through the contentions of the appellant, as reproduced above. During assessment proceedings, no such document or evidence has been brought on record to substantiate that appellant has earned any commission on accommodation entry. The addition has been made only on the pretext that there has been several transactions in the bank account of the appellant and the same is for earning commission on accommodation entry, which is totally on conjecture and surmises and without any basis.

11.1 Therefore, looking to the facts and circumstances of the case, It is seen that nothing has been brought on record by the AO, nor any enquiries made from the persons to whom the funds have been given and from where it is received, the AO has not established his case on merits that it is a commission earned on the accommodation entry beyond doubt and thus addition has been made only on conjecture and hence deserves to be deleted. Accordingly, this ground of appeal is allowed. Appellant gets a relief of Rs.6,22,637/-

6.2 Before us, the learned DR relied on the order of the Assessing Officer, whereas learned Counsel of the assessee relied on the order of the Learned CIT(A).

6.3 We have heard rival submission of the parties on the issue in dispute. On perusal of the order of the Assessing Officer, we find that addition has made on the presumption that assessee was engaged in providing accommodation entries, but no evidence has been brought on record by the Assessing Officer to substantiate that the assessee was engaged in providing accommodation entries. The assessee has been subject to search and if at all the assessee was carrying out business of providing the accommodation entries, then such evidence must have been found against the assessee. But as per record no such evidences have been found even after conducting search at the premises of the assessee. Thus, addition cannot be made merely on the

presumption that family concerns have admitted providing accommodation entries in their statement of facts before the Settlement Commission. Accordingly, we do not find any infirmity in the finding of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The ground No. 2 of the appeal of the Revenue is accordingly dismissed.

7. The ground No. 3 of the appeal of the Revenue relates to addition of ₹ 12,53,36,332/- on account of unexplained investment in shares.

7.1 The brief facts qua the issue in dispute are that before the Assessing Officer, the assessee disclosed investment of ₹ 3,00,00,000/- and ₹ 9,53,36,332/- in the purchase of shares of company M/s Ginni Industries Ltd. and M/s. Shree Raj Mahal Jewellers Private Ltd. respectively. In view of the failure on the part of the assessee to explain source of the investment, the Assessing Officer held the investment as unexplained. Before the Ld. CIT(A), the assessee explained that investment in shares in dispute was made through banking channel and duly reflected in statement of affairs. The finding of the Learned CIT(A) on issue in dispute are reproduced as under:

“9. I have gone through the above submissions of the appellant and have considered the facts and evidences on record. The appellant has demonstrated that the investment has been made through the bank account of the appellant and payments have also been made through banking channels and duly reflected as assets/investment. The investment has been made in shares of M/s Ginni Industries Ltd. for Rs.3,00,00,000/- vide cheque from Karnataka Bank Ltd. for the year under consideration, and the source of this fund was transfer from M/s Riddhi Siddhi Gold to the appellant's said account in Karnataka Bank Ltd. on 27.03.2014. Accordingly, the appellant has explained this investment, duly supported the nature and source of investment in the shares in M/s Ginni Industries Ltd. for the year under consideration.”

9.1 Similarly, for the investment made in shares of M/s Shri Raj Mahal Jewellers Ltd. amounting to Rs.9,53,36,332/-, it is done through cheque from Bank account of appellant, in Karnataka Bank Ltd. for the year under consideration, and the source of this fund was transfer from M/s Riddhi Siddhi Gold to the appellant's said account in Karnataka Bank Ltd. on various dates. Apart from transactions through Karnataka Bank Ltd., Rs.3,00,00,000/- has been invested on 28.03.2014 by appellant through transfer from her account maintained in Fedral Bank and the funds have been received from M/s Riddhi Siddhi Gold. Accordingly, the appellant has explained this investment, duly supported the nature and source of investment in the shares in M/s Ginni Industries Ltd. and Shri Raj Mahal Jewellers Ltd. for the year under consideration.

9.2 The AO has made this addition without considering the details of bank account by the appellant. However, in view of the above discussions and looking to the facts and circumstances of this case and in law, the source has been treated to be duly explained and therefore addition made on account of unexplained investment from undisclosed sources deserves to be deleted. Accordingly, this ground of appeal is allowed.”

7.2 Before us, the Learned DR relied on the order of the Assessing Officer, whereas the Learned Counsel of the assessee relied on the order of the Learned CIT(A).

7.3 We have heard rival submission of the parties on the issue dispute and perused the relevant material, including the order of the lower authorities. We find that the Assessing Officer held the investment in shares as unexplained mainly due to reason that no information regarding source of investment was provided by the assessee, however, before the Learned CIT(A), the assessee has duly explained the bank account through which investment was made and the source of money. The learned DR has not disputed this finding of the Learned CIT(A) that investment had been made through bank account. In our opinion, finding of the Learned CIT(A) on the issue-in-dispute is well reasoned and we do not find any infirmity in order of the learned CIT(A) and

accordingly, we uphold the same. The ground No.3 of the appeal of the Revenue is accordingly dismissed.

8. The grounds No. 4 & 5 of the appeal of the Revenue are general in nature, which we are not required to adjudicate upon and accordingly, dismissed as infructuous.

9. The grounds No. 1 & 3 of the appeal of the assessee are general in nature and accordingly same are dismissed as infructuous.

10. In the result, the appeals of the Revenue and the assessee are allowed partly for statistical purposes.

Order pronounced in the open court on 14th January, 2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 14th January, 2021.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi