

आयकर अपीलिय अधिकरण , ' सी ' न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन, लेखा सदस्य समक्

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No: 559/Chny/2019

निर्धारण वर्ष/Assessment Year : 2015-16

Shri Alok Gupta,
No. 444, 3rd Cross Street, 8th Main Road,
3rd Block, Koramangala,
Bengaluru – 560 034.

Vs. The Assistant Commissioner of
Income Tax (Appeals),
Central Circle –1(1),
Chennai.

[PAN: AEEPA 9819H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by	:	Ms. Jharna B. Harilal, CA
प्रत्यर्थीकीओरसे/Respondent by	:	Shri. Abani Kanta Nayak, CIT
सुनवाईकीतारीख/Date of Hearing	:	22.04.2021
घोषणाकीतारीख/Date of Pronouncement	:	24.06.2021

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- 16, Chennai in ITA No.99/CIT(A)-18/2016-17 dated 04.01.2019 for the assessment year 2015-16.

2. The case was heard through video conferencing. The Ld AR submitted that the assessee has filed the following additional grounds

" 1. On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the impugned additions towards cash of Rs. 45,65,420/- in the hands of the Appellant without appreciating the submission of the Appellant and the impugned addition is liable to be deleted.

2. The Ld. CIT(A) ought to have appreciated that the cash found during course of search Rs. 45,65,420/- and out of the this Rs. 40,00,000/- was seized and the balance amount of Rs. 5,65,420/- the source was explained. Thus, the addition confirmed has to be deleted.

3. For these and other ground that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed."

and pleaded that although the assessee has raised these grounds before the Ld CIT(A) , due to oversight , these grounds were not raised in form 36 and hence pleaded to admit them in the interest of justice and dispose them on merit.

3. We heard the rival parties and admit the additional grounds .

4. The Ld. AR submitted that this appeal is directed against the inclusion of cash found during the course search to the tune of Rs.45,65,420/- and alleged undisclosed investment in jewellery to the tune of Rs.1,81,72,099/-. There was a search under Section 132 of the Act carried out on 07.08.2014 in the premises where the Appellant was residing along with his family members. The cash found was Rs.45,65,420/- out of which Rs.40 lakhs was seized. Similarly, gold jewellery/bullion, gold coins, diamond found was .4684640 grams out of which 12,186.55 grams was seized. Silver articles to the rune of 107.30 grams was

found and not seized. The Appellant submitted that the assets found in the course of the proceedings under Section 143(3) read with Section 153B(1)(b) of the Act have been owned and declared by his father Sri Ravi Kumar Gupta who had made an application under Section 245C of the Act before the Settlement Commission and the same stood explained. Accordingly, no impugned addition towards investment in the above assets is required to be made in the hands of the Appellant. The Appellant had also furnished details with regard to the jewellery/bullion, diamond, gold coins and silver declared by various family members and the company in respect of wealth-tax returns which had been verified and accepted by the AO. The balance quantity of jewellery/bullion/diamond/gold coins and silver which were not explained were valued at Rs.1,81,72,099/- and the AO proposed to assess the same as unexplained investment in the hands of the Appellant. The Appellant submitted that the Appellant's father Sri Ravi Kumar Gupta declared Rs. 1.5 crores under Section 132(4) of the Act during the search proceedings and further had also made declaration in the settlement application before the Settlement Commission which has been accepted and to that extent the same was not liable to be included in the hands of the Appellant. He had also challenged the valuation of the jewellery at Rs.1,81,72,099/-. Subsequently, vide order dated 07.12.2018 under Section 154 of the Act, the value of jewellery has been reduced to Rs.1,61,42,900/-. A copy of the order under Section 154 of the Act as made by the AO is enclosed at Page No.30-35 of the Paper Book. Further, the Appellant had also provided cash flow extracts of the family members which is enclosed in

the Paper Book at Page No.1-23 to satisfy that to the extent of Rs.5,67,415/- out of cash seized stood explained which was not seized at the time of search. The AO however has concluded the assessment originally on 29.12.2016 determining the total income at Rs.2,49,95,719/- wherein the impugned additions as mentioned herein above have been made. The Appellant has challenged the impugned additions before the CIT (A). The appellant submitted before the CIT(A) that out of cash found in the sum of Rs.45,65,420/-, Rs.40 lakhs was owned and offered by Sri Ravi Kumar Gupta and only balance of Rs.5,65,420/- was required to be explained. The Appellant has provided evidence with regard to the availability of cash among the family members as enclosed in the Paper Book at Page No.1-23. Even this amount has been fully explained and thus no part of the impugned addition was required to be made. The CIT(A) having accepted the explanation, deleted the addition of Rs.40 lakhs which was added by the AO. However, with regard to Rs.5,65,420/- found, though the Appellant had provided explanation with regard to the availability of cash among the family members, declined to delete the addition against which the Appellant is in appeal before the Hon'ble ITAT.

4.1. With regard to the addition towards jewellery of Rs.1,81,72,099/-, as stated earlier, the value of jewellery has been reduced to Rs.1,61,42,900/-. While the appeal was pending before the CIT(A), it was brought to the notice of the CIT(A) that rectification application with regard to the valuation of jewellery was pending before the AO, though the very addition was under challenge before him

The Appellant made submissions with regard to declaration of jewellery in the hands of the Appellant's father Sri Ravi Kumar Gupta under Section 132(4) of the Act in the search proceedings and also the declaration before the Settlement Commission which has been accepted. The CIT(A) has however while concluding the appeal though categorically accepted the declaration made by the Appellant's father before the Settlement Commission with regard to the cash found, had not given any specific finding with regard to inclusion of jewellery, but confined to direct the AO to dispose of the rectification application under Section 154 of the Act pending before him. While doing so, the CIT (A) failed to consider that the application under Section 154 of the Act was only with regard to valuation and not with regard to inclusion of value of jewellery in the hands of the Appellant. The above order of the CIT(A) was challenged before the ITAT wherein the Appellant challenged the addition of cash of Rs.5,65,420/- and also inclusion of jewellery which value has been reduced to Rs.1,61,42,900/-.

4.2. The Ld. AR submitted that at the outset , from the evidence provided before the authorities below, no part of the impugned addition as sustained by the CIT (A) is required to be upheld. Undisputedly, it is a case where the assets found in various premises referred to in the order of the Settlement Commission which is enclosed in the Paper Book from Page No.36 to 65, belonged to the family and all of them have been owned by Sri Ravi Kumar Gupta, father of the Appellant before the Settlement Commission for which adequate evidence has been let in by him and the Settlement Commission was pleased to accept the

same and settle the issue. Accordingly, no part of the said assets are required to be considered for addition in the hands of the Appellant while block assessment has been made in the hands of the Appellant for the assessment year 2015-16. The Appellant's father Sri Ravi Kumar Gupta had offered 1.5 crores towards the jewellery found in the course of search. The Appellant had provided details in this regard in the settlement application filed which is enclosed at Page No.24-29 of the Paper Book. Page No 27 and 28 of the Paper Book clarifies this issue. It may be noticed that Sri Raw Kumar Gupta had offered Rs. 1.5 crores towards the jewellery which is quantified at Page No 28 under the head "Gold And Jewellery" which stood offered for the assessment years 2011-12 and 2014-15 to the tune of Rs 1.5 crores. Thus, the same was not includible in the hands of the Appellant. While declaring the jewellery, the entire jewellery found in addition to what has been declared in the wealth-tax returns by the respective family members had been considered. Thus, the Appellant did not invest any amount in jewellery to justify the impugned addition in his hands. The entire impugned addition made in this regard is accordingly liable to be deleted. In other words, the impugned additions as made, to the extent sustained by the CIT(A) are required to be deleted. Accordingly, it is prayed that the appeal may kindly be allowed.

5. Per contra, the Ld. DR submitted that since the assessee relied on its pending rectification petition before the A O the Id CI(T(A) has disposed the appeal accordingly and hence supported the orders of the lower authorities.

6. We heard the rival submissions and gone through the relevant material. With regard to the first issue, it is seen from page no. 1 of the paperbook dt 11.11.2020, that the assessee has explained the transaction before the lower authorities as under:

" Date of search: 07.08.2014

Summary of Cash in Hand in the following persons Cash Book as on 07.08.2014

<i>Name of the Person</i>	<i>Amt (Rs.)</i>
<i>ALok Gupta</i>	<i>1,19,381</i>
<i>Alok Gupta (HUF)</i>	<i>42,386</i>
<i>Ravi Kumar Gupta</i>	<i>32,160</i>
<i>Vandana Gupta</i>	<i>50,845</i>
<i>OPG Holdings India Private Ltd</i>	<i><u>3,22,643</u></i>
<i>Total</i>	<i><u>5,67,415</u></i>

Note: Cash found by the search team as on 07.08.2014 was Rs. 45,65,420, out of which Rs. 40,00,000 was seized and the balance cash of Rs. 5,65,420 was left by the search team as the amount was matching with the books of accounts."

6.1 The assessee also submitted before the Id CIT(A) that the cash of Rs. 5,65,420 was treated as accounted by the search parties and the balance of Rs. 40,00,000 was seized as unaccounted vide inventory of cash in ANN/STC/AG/CASH/S dated 08.08.2014 . As decided by the search party, out of Rs. 45,65,420 a sum of Rs. 5,65,420 was represented accounted cash. Only the balance of Rs. 40,00,000/- remained to be accounted. Even this Rs. 40,00,000/- has been admitted by Sri. Ravi Kumar Gupta, father of the

appellant , in his Settlement Application before the Settlement Commission, Chennai which was also accepted by the Commission vide its order dated 08.10.2018 under section 245(D) of the IT Act, 1961. In view of the above, the assessee pleaded that the above addition of Rs.5,65,420/- may please be deleted from the assessment of the Appellant.

6.2. Thus, it is clear from the above that the assessee has explained that the impugned sum was accounted and on due satisfaction only the authorised officer did not seize such sum. Therefore, the impugned addition is uncalled for. In view of the above, the addition made by the A O and sustained by the Ld. CIT(A) , without properly appreciating the facts and circumstances , is directed to be deleted and the corresponding grounds of the assessee are allowed .

7. With regard to the second issue, it is clear from page 29 of the paperbook dt 11.11.2020, titled as Annexure-D, Ravi Kumar Gupta," reconciliation chart of jewellery found during the course of search" in the name of family members with the jewellery as per wealth Tax returns and in the "explanation of difference jewellery offered in annexure –C , Shri Ravi Kumar Gupta, the assessee's father , has quantified the value of difference in jewellery at Rs. 14,671,178/- and rounded off to Rs. 15,000,000/- and admitted them as his income under the head out flow, titled as gold and

jewellery, for the ay 2013-14 at Rs. 8,962,000 and for the ay 2014-15 at Rs. 6,038,000 before the Hon'ble Settlement Commission as evidenced in page 28 of the paperbook, wherein Annexure-C- Cash Flow statement was placed. The undisclosed quantity of jewellery quantified by Shri Ravi Kumar Gupta in Annexure-D filed before the Settlement Commission included all the items found in the residential premise of the assessee. The Ld. AR further invited our attention to the paras 16.1, 16.2 and 19.1 of the order of the Hon'ble Settlement Commission, Chennai in Settlement Application no. TN/CN51/2017-18/IT dated 05.10.2018 which are extracted as under:

" 16.1 Bullion Trading: The PCIT mentioned that in the statement u/s. 132(4) of the Act on 26.08.2014, the applicant admitted undisclosed income of Rs. 60 crores on behalf of his entire group consisting business entities and his family members and subsequently filed a letter dated 26.09.2014 before the DDIT (Inv.) reiterating the above disclosure of Rs. 60 crores. In this regard, the breakup of the disclosure even by the applicant is as under:

<i>Shri Ravi Kumar Gupta</i>	<i>Rs. 31.43 crores</i>
<i>Sonal Vyapar Limited – Bullion disclosed u/s. 132(4)</i>	<i>Rs. 13.07 crores</i>
<i>Chennai Ferrous P. Ltd., - Bullion disclosed u/s. 132(4)</i>	<i>Rs. 15.50 crores</i>
	<i>-----</i>
<i>Total</i>	<i><u>Rs. 60.00 crores</u></i>

16.2 The PCIT pointed out that the applicant filed an affidavit dated 24.10.2016 in which he denied having ever done transactions in bullion trading in the two concerns and also has not admitted any additional income on account of bullion trading in the Settlement Application. Therefore, the PCIT submitted that the disclosure is not full and true.

.....

19.1 We have carefully considered the submission of the applicant and perused the material on record. We are of the considered view that the

disclosure of additional income of Rs. 12.20 crores along with offer of additional income of Rs. 57.69 crores in the SOF broadly addresses the issues raised by the Department and as emanating from material found and seized during the course of search. We also find that the disclosure of income Rs. 57.69 crores, the SOF along with offer of additional income of Rs. 12.20 crores during the course of hearing is fair and reasonable, in view of conspectus of material on record and submission of rival parties. We order the settlement of this case, accordingly, on income of Rs. 57.69 crores plus Rs. 12.20 crores (as offered in the SOF and as offered vide applicant's later dated 05.10.2018).

19.2 To conclude, it may be mentioned that the above addition of Rs. 12.20 crores encompasses the points on which addition considered have been appropriated by us after taking into account the conspectus of material on record and totality of facts and circumstances. In respect of other points where no addition is made, the clarification/submission of the applicant is found satisfactory and acceptable. The computation of income is given as under:

....."

7.1 Thus, it is clear from the above, that Shri. Ravi Kumar Gupta has admitted the value of undisclosed investment in jewellery found in premises of the assessee and admitted them as his income. The Settlement Commission on due appreciation of relevant materials ordered the settlement as extracted above. It is seen from the assessment order dated 29.12.2016 that the A O made the assessment recording the following reasons:

" though the assessee's father Shri. Ravi Kumar Gupta has admitted an income of Rs. 1.50 crores towards undisclosed jewellery/bullion, diamond, silver articles found during the search operation in the residential premises of the assessee as his undisclosed income, Shri Ravi Kumar Gupta had not disclosed the said income in his return of income filed u/s. 153A of the Act. As per the provisions of section 132(4A) where any money/bullion/diamond, etc., is found in the

possession or control of any person in the course of a search such assets are presumed to belong to such person. In view of this the amount of Rs. 1,81,72,099/- representing the value of gold jewellery, diamond and silver articles found during search for which assessee could not explain the sources belongs to the assessee Shri Alok Gupta and the same is added as his undisclosed income for the financial year 2014-15 relevant to ay 2015-16."

7.2 In the above facts and circumstances, when the assessee furnished a copy of the order of the Settlement Commission before the Ld. CIT(A) and pleaded that the assessee has disowned the ownership of the impugned assets and on the other hand his father, Shri. Ravi Kumar Gupta, owned them up before the Settlement Commission, which has duly considered and settled the issue, therefore, the impugned additions in the hands of assessee was opposed to law and the impugned additions are liable to be deleted and relied on relevant case law etc , the impugned direction issued to the A O by the Ld. CIT(A) without appreciating the facts and circumstances properly is not sustainable in law.

7.3 Therefore , we find merit in the assessee's submissions extracted in para 4.2, supra. Since Shri. Ravi Kumar Gupta owned up the assets found in various premises referred to in the order of settlement commission which included the impugned assets found in the assessee's premises and the settlement commission on due appreciation of the relevant material has accepted and settled the same in the order referred, supra, no part of the said assets could be considered for addition in the hands of the assessee . Therefore, the A O is

directed to delete the impugned addition. Corresponding grounds of the assessee are allowed.

8. In the result, the assessee's appeal is allowed.

Order pronounced on 24th June, 2021 at Chennai.

Sd/-

(धुव्वुरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 24th June , 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)
6. गार्डफाईल/GF