

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

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 3342/DEL/2018 (A.Y 2013-14)  
(THROUGH VIDEO CONFERENCING)**

ITO Ward-35(3) Room No. 809, 8 <sup>th</sup> Floor, E-2 Block, Pratyaksh Kar Bhawan, Civic Centre, Dr. S. P. Mukherjee Marg, Minto Road, New Delhi <b>(APPELLANT)</b>	Vs	Rekha Gupta 110-A, DDA Flats SFS, Gulabi Bagh, New Delhi <b>PAN:AANPG6898F</b>  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Farhat Khan, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. K. Sampath, Adv</b>

<b>Date of Hearing</b>	<b>05.07.2021</b>
<b>Date of Pronouncement</b>	<b>30.07.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against order dated 08/12/2017 passed by CIT(A)-12, New Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:-

1) *“The Id.CIT(A) has erred both in law and on facts in allowing the expenses of purchase of gold bars of Rs.4.57 crores from M/s.N.K.Medallion Gold Pvt. Ltd. without establishing essential ingredients of factum of such purchases namely without producing any evidence beyond purchase bills, without explaining how two bills from same party are so different, without furnishing proof of gold transportation and delivery, without giving any reason as to how*

*such purchases could be made by assessee without making a single penny payment against it despite the fact that maximum credit allowed in gold bar trading is a week time and ultimately the account was settled next year by return of such gold.*

*2) The Ld.CIT(A) has erred in law and on the facts in allowing purchase expenses of Rs.4.57 crores by stating that such party M/s.N.K.Medallion Gold Ltd. was genuine although notice issued u/s.133(6) of the Income Tax Act, 1961 by Assessing Officer on such party was not replied by them.*

*3) The Id.CIT(A) has erred in not appreciating the mandate of the Rule 46A(1) of the IT Rules, 1962 which debars the assessee to produce any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the circumstances enumerated in the clause (a) to (d) of the Rules 46A(1) of the IT Rules, 1962, and non availability of the same in the assessment proceedings, or/and its going to the very root of the matter to be decided upon by the Id. CIT(A) has not been contemplated by the legislature in the scheme of the Rules 46A(1) of the IT Rules, 1962.*

*4) The Id.CIT(A) has not appreciated that the assessee failed to discharge the primary onus cast upon her by section 37(1) of the IT Act, 1961 by proving with documentary evidence that the expenditure of Rs.4,57,42,900/- claimed to have been made by the assessee to M/s.N.K.Gold Medallion Pvt. Ltd. was genuinely incurred by the assessee wholly and exclusively for the purposes of the assessee's business.*

*5) The Id.CIT(A) has not appreciated that the assessee's conduct in respect of her contended purchases from M/s.N.K.Gold Medallion Pvt. Ltd. has not been in harmony with prepondence of human probabilities.*

*6) The Id.CIT(A) has not appreciated that the assessee failed to prove the credit worthiness of the lenders and also the genuineness of transaction before the Assessing Officer by producing relevant credible documentary evidence in respect of unsecured loan of Rs.39,25,000/-, the lenders of which did not even have commensurate income as per their respective return of*

*income. -*

3. The assessee is an individual and is carrying on the business of purchase and sale of Gold Bars. In this case, the return of income was filed on 17/09/2013 declaring net taxable income of Rs.1,34,410/-. The Assessing Officer made addition of Rs.4,57,42,900/- in respect of sales and purchase as well as made addition of Rs.60,000/- towards certain purchases. The Assessing Officer also made addition of Rs.39,25,000/- towards unsecured loans addition of Rs. 5,92,000/- towards unexplained cash credits and Rs. 20,000/- towards salary which was not declared. Thus, the Assessing Officer made addition of Rs. 5,03,39,900/- in different heads as stated in the assessment order.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the Assessing Officer has rightly made addition relating to Rs. 4,57,42,900/- thereby holding that the purchases made from M/s N. K. Medallion Gold Pvt. Ltd. are not tallying with the transactions shown by the assessee. The Ld. DR submitted that the additional evidence put up before the CIT(A) was admitted without adhering to Rule 46A of the Income Tax Rules, 1962. The Ld. DR further submitted that the CIT(A) simply allowed the expenses of purchase of gold bars of Rs.4.57 crores from M/s N. K. Medallion Gold Pvt. Ltd. without establishing essential ingredients of facts of such purchases namely without producing any evidence beyond purchase bills, without explaining how two bills from same party are so different as well as without furnishing proof of gold transportation and delivery & without giving any reason as to how such purchases could be made by the assessee without making a single penny payment against it despite the fact that maximum credit allowed in gold bar trading is a week time and ultimately the account was settled next year by return of such gold. The Ld. DR further submitted that the CIT(A) erred in allowing purchase expenses of Rs. 4.57 crores by stating

that such party M/s N. K. Medallion Gold Pvt. Ltd. were genuine although notice issued u/s 133(6) of the Income Tax Act, 1961 by Assessing Officer on such party was not replied by them. The Ld. DR further submitted that the assessee failed to discharge the primary onus cast upon her by Section 37(1) of the Income Tax Act, 1961 by proving with documentary evidence that the expenditure of Rs. 4,57,42,900/- claiming to have been made by the assessee to M/s N. K. Medallion Gold Pvt. Ltd. was genuinely incurred by the assessee wholly and exclusively for the purposes of assessee's business. The CIT(A) has not appreciated that the assessee's conduct in respect of her said purchases from M/s N. K. Medallion Gold Pvt. Ltd. has not been in harmony with preponderance of human probabilities. The CIT(A) has not appreciated that the assessee failed to prove the creditworthiness of the lenders and also the genuineness of transaction before the Assessing Officer by producing relating credible documentary evidence in respect of unsecured loan of Rs. 39,25,000/.

6. The Ld. AR submitted that the CIT(A) has rightly taken a cognizance of all the relevant evidences filed before the appellate authority as there was a dispute and only details of return, bank statement were given at the time of assessment proceedings and this reason is sufficient to admit the additional evidence by the CIT(A). The Ld. AR further submitted that the purchases made by the assessee was all accepted in the past and also in the present assessment year. All the purchases were proper and was proved before the Appellate Authority and no adverse comment by the Assessing Officer was made in his remand report. The Ld. AR further submitted that the CIT(A) has taken a cognizance of the loan which was given to the nephew and her son and since it was given to son & nephew, the same were interest free loan and in subsequent years, it has been returned of, as M/s N. K. Medallion Gold Pvt. Ltd. was not in operational business. Thus, the CIT(A) has rightly allowed these two claims.

7. We have heard the Ld. DR and perused all the relevant material available on record. As regards to Ground Nos. 1 to 5, it is relevant that the assessee has filed all the relevant evidences before the CIT(A) and the CIT(A) has taken cognizance of the remand report. The CIT(A) has rightly admitted the additional evidences as it was not available at the time of the assessment proceedings to the assessee and the Assessing Officer has not given ample opportunity to produce the same. Thus, CIT(A) rightly admitted the additional evidences strictly adhering to Rule 46A of the Income Tax Rules, 1962. Further on merit relating to addition of Rs. 4,57,42,900/- in respect of expenditure, the assessee through the evidences has demonstrated that the expenditure incurred on purchases were genuine and the assessee has also proved the identity and creditworthiness of the parties. Though the Assessing Officer has remarked that the notices issued to the party under Section 133(6) was not replied, it was not pointed out by the Revenue that the party was not in existence or the transaction was not genuine. In fact, on record, the party has filed confirmations and other relevant documents. Thus, the plea of the Ld. DR that the assessee failed to discharged its onus, does not survive. We find that the CIT(A) held as under:-

*“8.6 From the details furnished, it is seen that assessee purchased gold bar from N.K. Gold Medallion Pvt. Ltd. weighing 16,895.9 gms in F.Y. 2012-13 and sold the gold bar to M/s N.K. Gold Medallion Pvt. Ltd. weighing 16,335.7 gms through five bills in F.Y. 2013-14. Besides the above the appellant has filed the copy of the ID for the online return filed with Department of Trade and Taxes, Government of NCT of Delhi, dtd. 23.10.2012 and copy of the verification report of annexure 2A & 2B filed with the Department of Trade and Taxes on different dates in respect of sales to M/s N.K. Gold Medallion Pvt. Ltd. M/s N.K. Gold Medallion Pvt. Ltd. has confirmed the accounts of Swaran Traders for F.Y. 2013-14 in their books of account reflecting the aforesaid transactions. As per the trading and P&L a/c of Swaran Traders, the proprietorship concern of the assessee for F.Y. 2013-14, the sales have*

*been declared at Rs. 91,83,97,793/- and the gross profit has been shown at Rs. 10,90,472/-.*

*8.7 In the rejoinder the appellant has submitted that M/s N.K. Gold Medallion Pvt. Ltd. has shown Swaran Trader as Trade debtor of the similar amount of Rs. 457.43 lacs. The turnover of M/s N.K. Gold Medallion Pvt. Ltd. was Rs. 90,758.28 lacs for the year under consideration. The turnover of M/s N.K. Gold Medallion Pvt. Ltd. was substantial enough to transact this volume with the assessee. Further, the assessee is in family relation with the Directors of M/s N.K. Gold Medallion Pvt. Ltd. In the F.Y. 2013-14, the balance was settled by way of multiple sales from Swaran Traders to M/s N.K. Gold Medallion Pvt. Ltd. The two concerns have made sales and purchases which are mutually independent. The appellant is dealing in gold bullion which is purchased and sold at the market rates applicable on day to day basis.; The quantity of gold bullion purchased was 16,469.09 grams and the quantity sold was 16,335.07 grams. This shows that the transactions were not just squaring up the balances but the actual transactions. The assessee had accounted for the profits and losses involved in the transactions and had paid the income tax applicable. The assessee and M/s N.K. Gold Medallion Pvt. Ltd. charged and paid VAT as applicable. The turnover of Rs.91,83,97,793/- declared for the F.Y. 2013-14 by M/s Swaran Traders, proprietorship concern of the assessee, proves the substantial sales to multiple parties.*

*8.8. The appellant has rebutted the observations of the Assessing Officer in which he made the ground for rejecting the genuineness of the purchase like non-charging of interest, not paying advance, not having orders etc. It is also submitted that the impugned transactions cannot be called sham because assessee has not derived any direct or indirect benefits apart from regular profits. The Assessing Officer has not mentioned in the assessment order as to what type of benefit the assessee or seller have or could have achieved by making this transaction. While penalizing someone the*

*authorities must establish the motive derived by the assessee. The absence of any comments from the Assessing Officer in this regard, in the remand report, is substantial proof of his satisfaction on the transaction involved. He has not justified the stand taken by his predecessor who made this addition. The appellant has relied on the judgment of Delhi Tribunal in the case of Eland International Pvt. Ltd. Vs Deputy Commissioner of Income Tax (2009) 20 DTR Del (Trib) 113, wherein it was held that if sales have been affected out of the purchases made from the parties, which did not confirm the transactions on serving of notices u/s 133(6), it cannot be said that the purchases were bogus. The appellant has further relied on the judgment of Jaipur Bench of Income Tax Tribunal in the case of Shubh laxmi Export Vs ITO 10 DTR 281 in which it was held that no addition for bogus purchases u/s 69 C could be made for doubting physical delivery of purchases made.*

*“8.9 I have carefully considered the facts of the case, evidences on the Record and the submission of the appellant. With all the details and evidences produced before the Assessing Officer and mentioned supra, the identity of M/s N.K. Gold Medallion Pvt. Ltd. cannot be doubted. Further the impugned transaction is supported by several independent documents in the form of purchase invoices, levy of VAT, deposit of VAT, transaction recorded in the books of account of both the parties involved, balances shown in the audited balance sheets of the parties, confirmation from the seller party i.e. M/s N.K. Gold Medallion Pvt. Ltd. etc. The Assessing Officer has not commented adversely on the additional evidences submitted by the assessee. Therefore, I delete the addition made by the Assessing Officer and allow the ground taken by the assessee.”*

It is pertinent to note that the assessee is dealing in gold bullion which is purchased and sold at the market rates applicable on day to day basis. The quantity of gold bullion purchased was 16,469.09 grams and the quantity sold was 16,335.07 grams. This shows that the transactions were not just squaring

up the balances but the actual transactions took place. The assessee had accounted for the profits and losses involved in the transactions and had paid the income tax applicable. The assessee and M/s N.K. Gold Medallion Pvt. Ltd. charged and paid VAT as applicable. The turnover of Rs.91,83,97,793/- declared for the F.Y. 2013-14 by M/s Swaran Traders, proprietorship concern of the assessee, proves the substantial sales to multiple parties. Thus, the CIT(A) has given a detailed finding and there is no need to interfere with the finding of the CIT(A) and the Ld. DR could not controvert the same. Hence, Ground Nos. 1 to 5 are dismissed.

8. As regards to Ground No. 6, the CIT(A) held as under:

*“14.4 The appellant has filed additional evidences under Rule 46A in the form of copy of the bank accounts, copy of the Income tax Returns and confirmation of the loans along with the addresses of Mr. Anil Gupta (Husband of the assessee), Mr. Bharat Bhasin, Ms. Nupur Gupta (Daughter of the assessee), copy of the bank account and loan confirmation along with current address of M/s Divya Shree Financial and Capital Services Pvt. Ltd. and M/s Anant Shree Financial Services Pvt. Ltd. The appellant, in the rejoinder dtd. 07.12.2017, in respect of loan from Mr. Bharat Bhasin, has submitted that the loan creditor has confirmed the transaction. He has filed documents called for requiring u/s 68 of the IT Act. The Assessing Officer has made wrong observation that there was cash deposit in the bank account immediately before the issue of cheque. In respect of M/s Divya Shree Financial and Capital Services Pvt. Ltd. it is submitted that in response to the notice of the Assessing Officer Shri Siddharth Gupta, the Director of the lender company filed memorandum and articles of association and copy of income tax return. This is one of the companies in which Mrs. Rekha Gupta is one of the Directors. The other Directors are family members. She was having dispute with her son. The dispute was pending in Company Law Board. There was no business in this company since 2011. Due to this dispute,*

*requisite papers like balance sheet etc. were not filed with the Registrar of companies and income tax department. As regards, the source of the amounts received, the company had sold a property of the company for Rs. 12,15,000/-, out of which Rs. 10,00,000/- was received in the bank before days of the transaction with the assessee. The copy of the sale deed is attached. Out of the same sum Rs.9,80,000/- was transferred to Mrs. Rekha Gupta for which copy of the bank statement is enclosed. In regard to the loan amounting to Rs. 11,45,000/- from M/s Anant Shree Financial Services Pvt. Ltd., the appellant has submitted that the Director of this company has mentioned about this loan to Rekha Gupta. Mr. Siddharth Gupta, the Director of this company filed memorandum and articles of association along with Income Tax Return. This is also one of the companies in which Mrs. Rekha Gupta is one of the Directors. The other Directors are family members. The appellant has again mentioned the dispute with her son pending in Company Law Board. This company sold a property for Rs. 14,50,000/- out of which Rs. 11,50,000/- was received in bank just before the day of transaction between the company and Mrs. Rekha Gupta. The copy of the sale deed is enclosed. Out of the above amount Rs. 11,45,000/- was transferred to the assessee. Copy of the bank statement of the lender company has been enclosed.*

14.5 *I have carefully considered the facts of the case, evidences on the record and submission of the appellant. The Assessing Officer has accepted the genuineness of the following loans in the remand report -*

- (i) *Rs.3,00,000/- from Shri Anil Gupta*
- (ii) *Rs.5,00,000/- from Smt. Nupur Gupta*

*Since, there are no other adverse facts, the additions in respect of the above loans are deleted.*

14.6 *The appellant has given sufficient evidences and confirmations in*

*respect of the loans from M/s Anant Shree Pvt. Ltd., Shri Bharat Bhasin and M/s Divya Shree Pvt. Ltd. The discussion made above is not repeated here for the sake of brevity. Therefore, the additions made in respect of the loans from the above parties are deleted (Relief Rs.9,80,000 + Rs.15,00,000/- + Rs.11,45,000/-).*

Thus, there was clear finding given by the CIT(A) that in respect of M/s Divya Shree Financial and Capital Services Pvt. Ltd., Shri Siddharth Gupta, the Director of the lender company filed memorandum and articles of association and copy of income tax return. This is one of the companies in which Mrs. Rekha Gupta is one of the Directors. The other Directors are family members. She was having dispute with her son. The dispute was pending in Company Law Board. There was no business in this company since 2011. Due to this dispute, requisite papers like balance sheet etc. were not filed with the Registrar of companies and income tax department. As regards, the source of the amounts received, the company had sold a property of the company for Rs. 12,15,000/-, out of which Rs. 10,00,000/- was received in the bank before days of the transaction with the assessee. The copy of the sale deed is attached. Out of the same sum Rs.9,80,000/- was transferred to Mrs. Rekha Gupta for which copy of the bank statement was produced by the assessee before the CIT(A). These facts were not disputed by the Assessing Officer at the time of filing remand report before the CIT(A). As regards to the loan amounting to Rs. 11,45,000/- from M/s Anant Shree Financial Services Pvt. Ltd., the Director of this company has mentioned about this loan to Rekha Gupta. Mr. Siddharth Gupta, the Director of this company filed memorandum and articles of association along with Income Tax Return. This is also one of the companies in which Mrs. Rekha Gupta is one of the Directors. The other Directors are family members. The assessee has again mentioned the dispute with her son pending in Company Law Board. This company sold a property for Rs. 14,50,000/- out of which Rs. 11,50,000/- was received in bank just before the day of transaction between the company and Mrs. Rekha Gupta. The copy of

the sale deed was produced before the CIT(A). Out of the above amount Rs. 11,45,000/- was transferred to the assessee. Thus, these facts were also not disputed by the Assessing Officer in the remand report. Therefore, the findings of the CIT(A) do not need any interference. Hence, Ground No. 6 is dismissed.

9. In result, appeal of the Revenue is dismissed.

**Order pronounced in the Open Court on this 30<sup>th</sup> Day of July, 2021.**

**Sd/-**

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Dated : 30/07/2021

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	05.07.2021 & 22.7.2021
Date on which the typed draft is placed before the dictating Member	05.07.2021
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	