

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**  
(Through web-based video conferencing platform)

**BEFORE SHRI DUVVURU R L REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S. BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 75/VIZ/2021  
(Asst. Year : 2017-18)**

ITO, ward-1(1),  
Visakhapatnam.

Vs.

M/s. Mutyala Jewellers,  
Shop No.2, Sai Shopping  
Complex, Dwarakanagar,  
Visakhapatnam.

(Appellant)

PAN No. AACFM 0021 H  
(Respondent)

**C.O.No.38/VIZ/2021  
(Arising out of I.T.A. No. 75/VIZ/2021)  
(Asst. Year : 2017-18)**

M/s. Mutyala Jewellers,  
Shop No.2, Sai Shopping  
Complex, Dwarakanagar,  
Visakhapatnam.

Vs.

ITO, ward-1(1),  
Visakhapatnam.

PAN No. AACFM 0021 H  
(Applicant)

(Respondent)

Assessee by : Shri G.V.N. Hari, Advocate.  
Department by : Shri Sankar Pandi, Sr.DR

Date of hearing : 14/02/2022.  
Date of pronouncement : 09/03/2022.

**ORDER****PER S. BALAKRISHNAN, ACCOUNTANT MEMBER:**

This appeal is filed by the Revenue and the cross objection is filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1 [for short, "CIT(A)"], Visakhapatnam in ITA No.10370/2019-20/CIT(A)-1/VSP/2020-21, dated 18/09/2020 for the A.Y.2017-18 arising out of the order passed by the AO u/sec. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

**2.** The Revenue has raised the following grounds of appeal:-

- "1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*
- 2. The Ld. CIT(A) erred in deleting the addition of Rs.44,92,394/- towards unexplained purchases from Giriraj Jewellers, made by the assessing officer by holding that the Assessing officer ought to have enquire into the matter to examine the genuineness of the bills, where the Assessing officer has clearly established the bogus nature of the bills.*
- 3. The Ld. CIT(A) erred in deleting the addition of Rs.26,34,505/- towards unexplained purchases from UV jewellers, made by the assessing officer by holding that the Assessing officer ought to have enquired into the matter to examine the genuineness of the bills, where the Assessing officer has clearly established the bogus nature of the bills.*
- 4. The CIT(A) ought to have observed that the explanation given by the assessee in the statement recorded u/s 131 of the Income Tax Act, 1961, that some purchases are not recorded in the purchase register has no value in the absence of details thereof.*
- 5. The CIT(A) ought to have observed that the 6A purchases reported by the assessee in the purchase register are not in concurrence with VAT returns.*
- 6. The CIT(A) ought to have noticed that non-availability of bills/vouchers for 6A purchases and nonpayment of refunds exceeding Rs.20,000/- through cheque are nothing but*

*submission of fabricated evidence in the form of 6A purchases.*

7. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.*
8. *For these and other grounds that may be urged at the time of appeal hearing, it is prayed that these above additions made on relevant disallowances be restored."*

**3.** Brief facts of the case are that assessee firm engaged in the business of sale of gold jewellery and silver articles. A survey u/sec. 133A was conducted in the business premises of the assessee on 14/03/2017 based on cash deposits during demonetization period of Rs. 16,79,000/- in the assessee's bank account No.0106111000189 with Andhra Bank, Dwarakanagar, Visakhapatnam. A statement u/sec. 131 was recorded from the Managing Partner Mr. M.Nagabhusan Rao on 14/03/2017 & 17/03/2017. Mr. M.Nagabhusan Rao in response to the question No.14 accepted that "we are unable to reconcile the stock as both of us don't have perfect knowledge about the purchase bills and also in accounting. Therefore, for the time being, I have voluntarily admitted the value of excess stock i.e. Rs. 1,07,14,133/- as unaccounted/unexplained expenditure in the hands of the firm for the F.Y. 2016-17 relevant to the A.Y. 2017-18". The details of the of valuation of excess stock as agreed by Mr. M.Nagabhusan Rao are as under:-

Item	Difference in stock	Rate (Rs.)	Value (Rs.)
Gold Jewellery	3600.574 grams	2.645/gm	95,23,518
Silver Articles	29181.76 grams	40.80/gm	11,90,615
			1,07,14,133

However, in the return of income filed for the A.Y. 2017-18 on 30/10/2017 the assessee has not disclosed additional income of Rs. 1,07,14,133/- accepted at the time of survey in the return of income. Subsequently, a notice u/sec. 142(1) dated 09/05/2019 was issued to the assessee. In response to the notice, the assessee filed various replies to the AO. The AO after considering the evidences and replies produced by the assessee made the following additions:-

Particulars	Amount
Income returned	15,59,610
a) Addition on account of Silver articles discussed in paras No.10 & 11 above	11,90,615
b) addition on account of purchases of gold jewellery made from M/s. Giriraj Jewellers Mumbai treating them as purchases without bills, as discussed in paras 12,13,14,154 & 16	40,84,656
c) Additions on account of purchases made from M/s. U.V.Jewellers as discussed above para No.17	26,34,505
d) Addition on account of 6A purchases, as discussed in para No. 18,19,20,21 & 22	44,92,394
e) Addition on account of loans and interest thereon as discussed in paras 23,24,25 & 26	33,09,088
Addition to partner capital account in para No.27	5,00,000
Total income	1,77,70,868

**4.** Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A). The assessee filed written submissions

before the Id.CIT(A). The Id.CIT(A) by considering the written submissions filed by the assessee and relying on the decision of the Hon'ble Madras High Court in the case of *CIT Vs. Khader Khan Son* [(2013) 352 ITR 480 (SC)] partly allowed the appeal filed by the assessee by observing as under:-

*"6.1 ..... In this case, it was categorically held that a statement recorded u/s 133A of the Act has no evidentiary value and cannot be taken as the basis for addition. Therefore, I shall proceed to examine the sustainability of various additions made by the AO de hors the admission made at the time of survey u/sec. 133A of the Act."*

**5.** Aggrieved by the order of the Id.CIT(A), the Revenue is in appeal before us.

**6.** Ground Nos. 1, 7 & 8 are general in nature, need not be adjudicated.

**7.** Ground Nos.2 & 3, Id.AR argued that purchases were made before the date of survey i.e. on 14/03/2017 and has stated in the statement recorded u/sec. 131 of the Act, the books were not updated and hence, there was an excess stock as on the date of survey. He also argued that original purchase bills and confirmations from the parties namely, Giriraj Jewellers Rs. 40,84,655/- and UV Jewellers Rs. 26,34,505/- were produced before the AO. The Id.AR also argued that these are all genuine purchases wherein VAT payments have also been discharged by the assessee.

**8.** Ld.DR, however, argued that these bills are afterthought of the assessee to cover up the unexplained purchases and excess of stock discovered at the time of survey.

**9.** We have heard both the parties and perused the material placed on record. The findings of the Id.CIT(A) is given below for the sake of convenience:-

*"6.3 Ground no.(3): This ground is directed against the addition of Rs.40,84,656/- made by the Assessing Officer towards unexplained purchases from M/s. Giriraj Jewellers. The details of the purchases are as under:*

Invoice no.	Date	Purchase amount (Excluding VAT) (Rs.)
21	02.03.2017	1 <sup>3</sup> ,44,060
22	06.03.2017	14,98,1 13
23	09.03.2017	11,94,048

*The appellant submitted these bills as early as on 17.04.2017 and without conducting any enquiry whatsoever the Assessing Officer simply rejected the evidence on the ground that these bills were consecutively numbered. I found that the supplier Giriraj Jewellers is a registered dealer and raised a tax invoice charging VAT on the value of purchases. In case, the Assessing Officer had any doubt about the genuineness of these bills, he ought to have enquired into the matter to examine the genuineness of the bills. Without any such effort, the Assessing Officer is not justified in discarding the valid evidence filed by the appellant I do not find any merit in the action of the assessing officer. This addition of Rs.40,84,656 is directed to be deleted.*

*6.4 Ground no.(4): This ground is directed against the addition of Rs. 26,34,505 towards purchases from UV Jewellers. The appellant submitted the purchase bills and the confirmation of account issued by UV Jewellers. The details of the bills submitted are as under:*

Invoice no.	Date	Purchase amount (Rs.)
61	10.03.2017	20,37,365
62	11.03.2017	5,97,140

*The Assessing Officer made the addition mainly on the ground that the above two bills were not recorded in the purchase register impounded at the time of survey. The very contention of the appellant was that some of the purchases were not recorded in the books at the time the survey has taken place. Therefore, the Assessing could not have taken this as the basis to make the*

*addition. The Assessing Officer did not find out any defect in these bills and the genuineness of the bills was not disproved. Therefore, I do not find any merit in the addition made. The Assessing Officer is directed to delete the addition of Rs. 26,34,505."*

We note that the Id.CIT(A) has observed that the AO did not find any defect and has also not disproved the genuineness of the bills. The Id.CIT(A) also observed that the suppliers are registered VAT dealers and has raised Tax Invoice. We, therefore concur with the findings of the Id.CIT(A), and find no infirmity in the order passed by the Id.CIT(A) and no interference is required on these issues.

**10.** Regarding ground No.4, Id.AR relied on the decision of Hon'ble Madras High Court in the case of Khader Khan Son (supra) wherein the Hon'ble Supreme Court dismissed the civil appeal filed by the Revenue against the decision of the Hon'ble Madras High Court. We find force in the submissions of the Id.AR and by respectfully following the decision of the Hon'ble Supreme Court, we concur with the findings of the Id.CIT(A) i.e. statement recorded u/sec. 131A has no evidentiary value and cannot be taken as basis for addition.

**11.** Regarding ground Nos. 5 & 6, Id.AR argued that it is the business of the assessee to buy old gold and in exchange of new gold which is termed as 6A purchases. Ld.AR also demonstrated before us that 6A purchases have been disclosed in the VAT returns of the assessee.

**12.** Ld.DR, however, argued that 6A purchases and sales were not matching and hence, it cannot be accepted.

**13.** We have heard both the parties and considered the material available before us. The Id.CIT(A) noted that the assessee has submitted VAT returns where the 6A purchases were reported by the assessee. We therefore find that the assessee has satisfactorily explained the purchases and concur with the findings of the Id.CIT(A). We find no infirmity in the order passed by the Id.CIT(A) and no interference is required. Thus, the grounds raised by the Revenue is dismissed.

**14.** Cross Objection filed by the assessee in relation to ground Nos. 1 to 3 are in support of the order of the Id.CIT(A). As there is no grievance against the order of the Id.CIT(A), ground Nos. 1 to 3 filed by the assessee have become infructuous and are dismissed accordingly. As regards to Ground No.4 relating to section 115BBE, since the appeal of the Revenue is dismissed based on the facts and merits of the case, the provisions of section 115BBE cannot be applied and hence, the order of the Id.CIT(A) is quashed with respect to this ground. Thus, the cross objection filed by the assessee is partly allowed.

**15.** In the result, appeal filed by the Revenue is dismissed and the cross objection filed by the assessee is partly allowed.

Order Pronounced in open Court on this 09<sup>th</sup> day of March, 2022.

Sd/-  
**(DUVVURU R L REDDY)**  
Judicial Member

Sd/-  
**(S. BALAKRISHNAN)**  
Accountant Member

**Dated: 09<sup>th</sup> March, 2022.**

**vr/-**

Copy to:

1. *The Assessee - M/s. Mutyala Jewellers, Shop No.2, Sai Shopping Complex, Dwarakanagar, Visakhapatnam.*
2. *The Revenue - ITO, ward-1(1), Visakhapatnam.*
3. *The Pr.CIT-1, Visakhapatnam.*
4. *The CIT(A)-1, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

Sr. Private Secretary,  
ITAT, Visakhapatnam.