

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA No.1223/AHD/2016**

**(निर्धारणवर्ष / Assessment Years: (2012-13)**

**(Virtual Court Hearing)**

Shri Kalpeshbhai S. Soni, U-8-9, Ashirwad Complex, Bhatar Road, Surat-395003.	<b>Vs.</b>	The ITO, Ward-1(1)(3), Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADEPS9662H</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by : Shri P. M. Jagasheth, CA

Revenue by : Ms Anupama Singhla, Sr. DR

**सुनवाईकीतारीख/ Date of Hearing : 28/02/2022**

**घोषणाकीतारीख/Date of Pronouncement: 05/04/2022**

**आदेश / O R D E R**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the ld. CIT(A)”] in Appeal No. CAS-4/TFR/460/2014-15 dated 23.03.2016, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”], dated 27.02.2015.

2. The grounds of appeal raised by the assessee are as follows:

*“1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.2,46,00,648/- on account of unsecured loans received in from of gold and jewellery of Rs.1,89,23,818/- and unsecured loans of Rs.56,76,830/- treated as alleged unexplained and non-genuine u/s 68 of the Act, 1961.*

*2. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in enhancing addition of Rs.53,290/- as interest expenses claimed by the assessee.*

*3. It is therefore prayed that the above addition may please be deleted as learned members of the Tribunal may deem it proper.*

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

3. The facts necessary for disposal of the appeals are stated in brief. The assessee before us is an individual and filed its return of income on 30/09/2012 declaring total income at Rs.26,23,959/-. Subsequently, the return of income was processed u/s 143(1) of the Income-tax Act, 1961.

Later on, the assessee's case was selected for scrutiny and accordingly a notice u/s143(2) of the Act was issued on 09/08/2013. In response to the above notice, the assessee attended from time to time and filed documents and evidences. During the year under consideration, the assessee was engaged in the business of trading and manufacturing of jewellery. From the details submitted during the course of assessment proceedings, it was observed by assessing officer that assessee has during the year under consideration taken loan in the form of gold and jewellery from the following persons:

Sr. No.	Name of the persons	Amount in Rs.
1.	Smt. Bhavanaben M. Soni	35,09,800
2.	Smt. Javnikha S. Soni	31,46,800
3.	Smt. Mamtaben K. Soni	32,06,700
4.	Smt. Pushpaben S. Soni	37,48,500
5.	Shri Sureshchandra M. Soni	16,45,000
6.	Smt. Sarswatiben Soni	36,67,018
	<b>Total</b>	<b>1,89,23,818</b>

4. It was also noted by the assessing officer that assessee has during the year under consideration, taken loan from the following persons:

Sr. No.	Name of the persons	Amount in Rs.
1.	Kalpeshbhai S. Soni HUF	5,00,000
2.	Shri Gunvantbhai K. Jadhav	5,00,000
3.	Smt. Mamtaben K. Soni	3,41,000
4.	Manishbhai Soni HUF	4,50,000
5.	Smt. Bhavanaben M. Soni	3,00,000
6.	Smt. Pushpaben S. Soni	3,50,000
7.	Sureshchandra M. Soni	3,50,000
8.	Shri Bharatbhai S. Soni	9,00,000
9.	Shri Santilal Mangilal Soni	9,00,000
10.	Shri Nareshbhai Parekh	8,00,000
11.	Shri Jennis Patel	2,85,830
	<b>Total</b>	<b>56,76,830</b>

5. During the course of assessment proceedings, the assessee was asked to submit the copy of ITR, confirmation and bank statement of the persons from whom the assessee has taken loan during the year. The assessee has specifically been asked to submit the proof regarding Wealth Tax Return filed by the persons from whom assessee has taken loan in the form of Gold and Jewellery and evidence regarding acquisition of Gold and Jewellery by them. In response, the assessee submitted copy of ITR along with its annexure and copy of valuation report in respect of the persons from whom such Gold and Jewellery loan taken by the assessee. Ongoing through the same it was observed by assessing officer that all the persons have shown the same amount in their capital account for the F.Y.2011-12, as addition to their capital and in turn given the same as loan to the assessee. However, proof regarding wealth tax return and acquisition of Gold and Jewellery has not been submitted. From this the assessee could not established that the said Gold and Jewellery was in possession of the persons from whom the assessee has taken such loan in the form Gold and Jewellery. The assessing officer further noted that mere submission of valuation report is not sufficient to prove that such Gold and Jewellery was in their possession and source of acquisition could not be established. Under the circumstances entire loan of Rs.1,89,23,818/- shown by the assessee as received by him from the above mentioned six persons was treated as unexplained and non-genuine. So far as other loan of Rs.56,76,830/- claimed to have been received by the assessee from the above mentioned eleven persons is concerned, the assessee could not submit the corroborate evidence as called for. Therefore, under these circumstances the same was also treated as unexplained and non-genuine by the assessing officer. Since both, the loan of Rs.1,89,23,818/- and Rs.56,76,830/- totaling to Rs.2,46,00,648/- ( Rs.1,89,23,818 + Rs.56,76,830) were treated as unexplained and non-genuine, therefore assessing officer made addition to the tune of Rs.2,46,00,648/-, under section 68 of the Act.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the action of the Assessing Officer. Aggrieved, the assessee is in appeal before us.

7. Shri P. M. Jagasheth, Learned Counsel for the assessee, pleads that assessee was in financial crisis, therefore all the family members of the assessee came together to fight the financial crisis therefore took loan by pledging their gold and jewellery. The Learned Counsel contends that during the assessment stage, the assessee has submitted all possible documents to prove his claim such as, list of persons from whom loan has been taken, pressing circumstances to take loan etc. The Learned Counsel further argued that Government has launched the scheme of gold monetization scheme, 2015 and according to that scheme the assessee can avail the loan by pledging the gold ornament, therefore loan is a genuine transaction. The Id Counsel also stated that assessee need not to prove source of the source. The Id Counsel also submitted before us some additional evidences and prayed the Bench that addition made by the assessing officer may be deleted.

8. On the other hand, Ms. Anupama Singhla, Learned Departmental Representative (Id. DR) for the Revenue submits that gold jewellery which has been claimed to have been lent in the case of ladies varies from 31.46 lacs to 37.48 lacs. All jewellery as per the valuation certificates submitted is claimed to be of such quality that gross weight and net weight are same and every piece is 22 carat. None of these claimed creditors was ever assessed to wealth tax, although each of these ladies would have been liable to pay wealth tax. In the earlier capital accounts, no such jewellery was shown by these persons, hence these are bogus transactions to cheat the Revenue. The Id DR further pointed out that most of the Indian jewellery contains precious and semi-precious stones, jadau work, synthetic pieces etc. and very rarely would the gross weight and net weight be same. The claim itself fails all tests of probabilities of human behavior. The Id DR also contended that since the assessee has submitted additional evidences therefore the matter may be restored to the file of the assessing officer to examine these additional evidences.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the

case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that Id Counsel has submitted before the Bench, the following additional evidences:

(i) Summons from Debts Recovery Tribunal, Ahmedabad, DRT-2, in the case of Union Bank of India Vs. Kalpesh S. Soni & Ors, which is placed at paper book page no.2.

(ii) The application under section 19 of Recovery Debts and Bankruptcy Act, 1993 between Union Bank of India and Kalpeshbhai S. Soni and Ors, which is placed at paper book page no.3 to 18.

(iii) Corporation bank's notice for sale of immovable secured assets under Rule 8 of the Security Interest (Enforcement) Rules, 2002, which is placed at paper book page no. 19 to 22.

(iv) Gold Monetization Scheme (GMS), 2015, which is placed at paper book page no. 23 to 26.

(v) The description of purity of gold between 24K, 22K and 18K (vide PB.27 to 28) etc.

10. We note that most of the above additional evidences/ documents, are available on public domain, however, the assessing officer did not get opportunity to examine the veracity of these additional evidences/documents. Since the assessing officer has not examined these additional evidences/documents, therefore principle of natural justice requires that it would be fair to remit this issue back to the file of the assessing officer for his examination.

It was pointed out by Hon'ble Supreme Court in **Suresh Koshy George v. The University of Kerala & Ors.(1969 SCR (1) 317)** that "the rules of natural justice are not embodied rules" and in the same case the Hon'ble Supreme Court approved the following observations from the judgment of Tucker, L.J. in **Russel v. Duke of Norffolk and Ors. (1949) 1 All. England Reports 108)**:

*"There are in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on **the circumstances of the case, the nature of the inquiry,***

*the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."*

11. We note that these additional evidences/documents, (although some of them are from public domain), were neither examined by the assessing officer nor by Id CIT(A). Therefore, in the interest of justice and fair play for both the parties, we set aside the order of Id. CIT(A) and remit the matter back to the file of Assessing Officer for de novo adjudication, and to decide the matter in accordance to law after giving opportunity of being heard to the assessee.

12. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 05/04/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सुरत /Surat / दिनांक/ Date: 05/04/2022

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

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Assistant Registrar/Sr. PS/PS  
ITAT, Surat