

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI AMAR JIT SINGH, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1721/M/2020
Assessment Year: 2013-14**

Shri Rameshkumar H. Jain, BIT Chawl No.3, Shop No.202, Seth Mothi Sha, Love Lane, Mazgaon, Byculla, Mumbai – 400 010 PAN: AAIPJ9005G	Vs.	DCIT, Central Circle-2(4), Mumbai – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Ms.Ruchi Rathod, A.R.
Revenue by : Shri Ganesh Bare, Sr. A.R. CIT

Date of Hearing : 05.04.2022
Date of Pronouncement : 28.04.2022

ORDER

Per Amarjit Singh, Judicial Member:

The assessee has filed the present appeal against the order dated 17.03.2020 passed by the Commissioner of Income Tax (Appeals)-48, Mumbai relevant to assessment year 2013-14.

2. The assessee has raised the following grounds:

"1. On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeal) erred in not treating the search action as illegal and bad in law. The learned Commissioner of Income-tax (Appeal) erred in not holding that the assessment order passed by the assessing officer is bad, illegal & without jurisdiction. The said proceeding is illegal, without jurisdiction and bad in law.

2.1. On facts and circumstances of the case and in law learned CIT (Appeals) erred in confirming arbitrarily the addition of Rs.22,31,445/- being not treating the jewelry found in locker as the stock in trade of the appellant. Addition

is confirmed arbitrarily ignoring the facts and merits of the case and is bad in law and the same needs to be deleted ;

2.2 The Learned Commissioner of Income Tax (Appeal) failed to appreciate that the appellant had in the course or search proceedings while recording the statement of the appellant u/s. 132(4) of the Act, it was categorically stated that he does not have any shop or office for carrying out his business of jewellery and it is for this very reason that he maintains locker for safe keeping of jewellery.

2.3 The Learned Commissioner of Income Tax (Appeal) failed to consider that the appellant has filed his personal Balance Sheet for A.Y. 2006-07 onwards till A.Y. 2013-14, in which the closing stock of jewellery is duly shown.

The appellant craves leave to add, alter, amend or delete any of the above ground or grounds of appeal. The above grounds tire without prejudice to one another."

3. The brief facts of the case are that a search and seizure action under section 132 of the Act was carried out by the Investigation Wing-4, Mumbai in case of M/s. Gold Sukh Safety Vaults Ltd. (for short 'Gold Sukh') on 08.11.2012 . Gold was involved in the business of providing lockers on rent. It was also found that the Gold Sukh was providing the lockers without verification of KYC detail. Usually the locker was assigned in the name of first holder and his KYC details were kept on record by the company. However, the locker got operated by three more persons by incorporating their name on the agreement. No KYC details were sought for these additional operators of the locker. It was observed that the lockers were given on rent to hawala operators involving an illegal transfer of cash. Consequent to search and seizure action in case of Gold Sukh, the case of Shri Sanjay Kunmar Sharma was also covered by way of service of warrant under section 132 of the Act. The case of the assessee was also covered in view of locker No.237 at M/s. Samriddhi Safe Deposit Vaults Pvt. Ltd., 49, Dhanji Street, Mumbai – 400 003. On search, ornaments worth Rs.70,10,799/- were found from the said locker. Shri Sanjay Kunmar Sharma stated that the said locker was owned and operated by Shri Rameshkumar H. Jain, the assessee. The statement of Shri Sanjay Kunmar Sharma was recorded on 09.11.2012. Therefore, the AO served the notice to the assessee and after reply of the assessee, entire jewellery valuing of Rs.70,10,800/- was held to be owned and belonging to the assessee and after allowing the claim of the wife of the

assessee in sum of Rs.5,29,220/-, the claim of Rs.64,81,580/- was declined and added to the income of the assessee. Feeling aggrieved, the assessee filed an appeal before the Ld. CIT(A) who has allowed the claim of the assessee partly but the assessee was not satisfied on the grounds mentioned above, therefore, filed the present appeal before us.

4. All these issues are interconnected, therefore, are being taken up together for adjudication. Under these issues the assessee is claiming the additional stock of Rs.22,31,445/-. It is not in dispute that during the search of locker the jewellery and ornament worth Rs.70,10,799/- was found. The details are mentioned below:

Sr. no.		
1.	Gold & Jewellery belonging to third parties on account of sale on approval basis or labour work.	Rs.39,85,761/-
2.	Gold & Jewellery belonging to wife and children	Rs.7,93,594/-
3.	Stock of the Assessee	Rs.22,31,445/-
	Total Value	Rs.70,10,799/-

5. The claim of the assessee was almost allowed accepting the stock value of the assessee. The assessee is a trader in Gold & Jewellery without place of business. On account of search and seizure action of the locker No.237, the assessee was assessed under section 153C read with section 143(3) of the Act for the A.Y. 2006-07 to 2012-13. The account balance sheet and ITR were accepted for those years. Closing stock was also accepted in these years also. The demand raised was on the basis of return of income. The statement recorded under section 132(4) dated 09.11.2012 while giving the answer to question No.18, the assessee has accepted the jewellery worth Rs.28 lakhs that includes stock of business as he was operating the business on small scale basis. The AO did not consider the statement of the assessee and also did not consider the capital gain, balance sheet, ITR and passed assessment order under section 153C read with section 143(3) of the Act. The Ld. CIT(A) did not consider the same because the assessee was not having the place of business and the stock was found as in the locker. It is not a ground to decline the case of the assessee, because capital account, balance sheet, ITR, assessment order reflected the stock and claim to

that extent is also liable to be given to the assessee in accordance with law. Hence, it is quite clear that it is not the income of the assessee and stock is not liable to be included as income. Accordingly, the finding of the Ld. CIT(A) is not justifiable, hence, is hereby ordered to be set aside and these issues accordingly are decided against the Revenue and in favour of the assessee.

6. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 28.04.2022.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(AMAR JIT SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 28.04. 2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.