

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1578/Mum/2021

(A.Y: 2011-12)

Suresh Seksaria 5 th floor, Seksaria Chambers, 139 Nagindas Master Road, Fort, Mumbai – 400 001	Vs.	CIT(A) – NFAC Delhi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFPS0078K		
Appellant	..	Respondent

Appellant by :	Shri Ameet Patel.AR
Respondent by :	Shri Pramod Nikalje.DR

Date of Hearing	16.06.2022
Date of Pronouncement	20.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the CIT(A)- National Faceless Appeal Centre (NFAC) Delhi passed u/s 143(3) r.w.s 147 and 250 of the Act. The assessee has raised the following grounds of appeal:

I. *PURCHASE OF DIAMONDS FROM M/S KAILASH ENTERPRISES AMOUNTING TO Rs.9,84,750/- TREATED AS UNEXPLAINED INVESTMENT U/S 69.*

1.1 *On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals)*

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(herein referred to as 'CITA) erred in confirming the addition made by the Assessing Office amounting to Rs.9,84,750 u/s. 69 as an unexplained investment on the ground that it is an accommodation entry for purchase of diamonds from M/S Kailash Enterprises and issued a cheque against that purchase and have received cash from the said party.

1.2 In doing so, the learned CITA has ignored the main submission made by the appellant that section 69 is not applicable in this case as the purchase of diamonds has been clearly disclosed by the appellant in his books of account and he has even paid wealth tax on the same and that section 69 applies to investments not records in the books of account.

1.3 The learned CITA has erred in relying on various judicial decisions which deal with tax evasion even though in the instant case, there is no question of tax evasion as the appellant is neither in the business of diamonds or jewellery nor has he claimed any tax benefit by purchasing the said diamonds.

1.4 The learned CITA further erred in holding that the genuineness of the transaction has not been proved by the appellant despite the fact that the appellant had provided all details and proof of the transaction.

II. 1.5 The appellant prays that the addition of Rs. 9,84,750 be deleted.

**DISALLOWANCE OF COMMISSION AMOUNTING TO Rs.19,695
AND THE SAME IS ADDED AS UNEXPLAINED EXPENDITURE
U/S 69C**

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2.1 On the facts and circumstances of the case and in law, the learned CITA erred in confirming the addition made by the Assessing Officer in respect of commission expenditure amounting to Rs19,695 to the extent of 2% of the purchases u/s. 69C as unexplained expenditure.

2.2 In doing so, the learned CITA has relied on assumptions and surmises and has wrongly concluded that the appellant has necessarily paid commission on the purchase and that too in cash and has thereby incurred unexplained expenditure.

2.3 The learned CITA has confirmed the addition without giving any cogent and valid reasons.

2.4 The learned CITA has also ignored the appellant's submission that the AO had never raised this issue about alleged commission during the assessment proceedings and had made the addition on an adhoc basis without providing any opportunity to the appellant to rebut the allegation.

2.5 The appellant prays that the addition made in respect of unexplained expenditure amounting to Rs. 19,695 be deleted in entirety.

The appellant respectfully craves leave to add to, alter or amend any of the above grounds of appeal.

2. The brief facts of the case are that the assessee is engaged in the business of job works for manufacturing of plastic boxes and trading in oil and greases. The assessee has filed the return of income for the A.Y 2011-12 on 28.07.2011 disclosing a total income of Rs.20,64,407/-. The Assessing Officer(A.O) has received information from DGIT (Inv), Mumbai that the assessee was involved in obtaining the bogus purchase bills and had made investments. Therefore

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the AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In compliance to notice, the Ld.AR of the assessee filed a letter to treat the return of income filed on 28.07.2011 as due compliance. Subsequently the A.O issued notice u/s 143(2) and 142(1) of the Act. In compliance, the Ld. AR of the assessee appeared from time to time and filed the details.

3. There was a search and seizure action carried out in the case of Shri Rajendra Jain Group and as per the information assessee is one of the beneficiary. The assessee has filed a letter dated 24.10.2018 explaining that he has purchased the diamonds of Rs.9,84,750/- from M/s Kailash Enterprises and the assessee has disclosed the facts in the wealth tax return. Further the assessee has mentioned that it was not claimed as expenditure in the books of accounts. The A.O has dealt on the chronology of the events of facts and observed that it is unexplained investments u/s 69 of the Act. Further the A.O has estimated the payment of commission @ 5% on value of investments which worked out to Rs.49,238/- and assessed the total income of Rs.30,98,395/- and

passed the order u/s 143(3) r.w.s 147 of the Act dated 05.11.2018.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and the findings of the AO and has confirmed the addition of investments and granted partial relief by restricting the commission expenses @ 2% and partly allowed the appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing the Ld. AR submitted that the CIT(A) has erred in confirming the addition u/s 69 of the Act with respect to investments made by the assessee in diamonds and restricting the commission expenses @ 2%. The Ld. AR emphasized that the assessee is engaged in the business and has not claimed any expenditure in the books of accounts in respect of purchases and has disclosed in the financial statements and supported his submissions with the paper book, judicial decisions and prayed for

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allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR that the CIT(A) erred in confirming the addition u/s 69 of the Act in respect of the investments in diamonds and estimated commission expense@2%.The Ld.AR submitted that the assessee has purchased the diamonds in the F.Y.2010-11 and referred to the balance sheet placed at page 3&4 of the paper book where the assessee has disclosed the jewellery addition of Rs. 9,84,750/-. The Ld.AR demonstrated the copy of wealth tax return filed at page 11 to 13 of the paper book in particular statement of net wealth-jewellery disclosure. The Ld.AR relied on the valuation certificate from the Government Authorized Valuer s certificate at page 16 of the paper book. The Ld. AR submitted that the assessee has made investments in jewellery and the payments are made through banking channel and cannot be disputed. Further the addition made by the AO u/s 69 of the Act does not apply to the assessee. Whereas, the

provisions of Sec.69 of the Act can be invoked when the assessee is found to be owner of any investments which are not recorded in the books of accounts.

7. In the present case, the assessee has invested in the diamonds and which are recorded in the books of accounts and reflected in the Balance sheet. We considering the submissions, and the information demonstrated find the submissions of the Ld.AR are realistic. The assessee has not claimed the expenditure in the profit & Loss account but is disclosed in the Balance sheet.

8. We considered the facts, provisions of the Act and the transactions that the assessee has made investments in the diamonds through the banking channel and was reflected in the balance sheet which cannot be ruled out. Further the assessee has filed the wealth tax return and valuation report including the value of jewellery certified by the Govt Authorized Valuer. Prima-facie we find the action of the A.O. applying the provisions of section 69 of the Act cannot be tenable. Accordingly, we set aside the order of the CIT(A) on this disputed issue and direct the AO to

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delete the addition. Since we have deleted the addition made u/s 69 of the Act and estimating commission expense will not survive and is deleted.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.06.2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20.06.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai