

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

ITA No. 2650/Mum/2022
(A.Y: 2017-18)

Mumtaz karim Samnani 492, Helios 2, Clover Acropolis Society, Opp Sambhar Hotel, Viman Nagar, Pune – 411014	Vs.	ITO – 17(2)(4) Room No. 112, Kautilya Bhavan, G Block, BKC, Bandra (E), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No AMOPS6908D		
Appellant	..	Respondent

Assessee by :	Mr.Rakesh Milwani.AR
Revenue by :	Ms.Richa Gulati.DR

Date of Hearing	20.12.2022
Date of Pronouncement	22.12.2022

आदेश / O R D E R

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

1. *Considering the facts and circumstances of the case and in law, the Assessing Officer erred in not considering sale proceeds of Jewellery as Long Term Capital Gains, and allowing cost of inflation index for arriving at the cost for the purpose of calculation of Long Term Capital Gains.*
2. *Considering the facts and circumstances of the case*

and in law, the Assessing Officer erred in not allowing deduction u/s 54F of the Income Tax Act, 1961 (hereinafter, for the sake of brevity referred to as 'the Act') to the extent of Capital Gains earned by the appellant and the same ought to be allowed.

3. Without prejudice to the above mentioned grounds, considering the facts and circumstances of the case and in law, the Assessing Officer erred in considering cost of acquisition at Rs. NIL.

4. Without prejudice to the above mentioned grounds, considering the facts and circumstances of the case and in law, the Assessing Officer erred in not appreciating the fact that where cost of acquisition is NIL, capital gains cannot be computed. [Gujarat High Court in Commissioner of Income Tax v/s Manoharsinhji P Jadeja (2006) 281 ITR 19].

5. Considering the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) has not even considered the above judicial decision relied upon by the appellant.

6. Considering the facts and circumstances of the case, such other and further reliefs be granted to the appellant as may be deemed fit and proper.

7. The appellant craves leave to add and/or alter and / or amend any ground(s) of appeal.

2. The brief facts of the case are that the assessee is an individual and filed the return of income for the A.Y 2017-18 on 31.07.2017 disclosing a total income of Rs. 4,06,500/-. Subsequently the case was selected

for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued through ITBA portal. In compliance to the notice, the assessee has filed the details and the case was discussed. The AO on perusal of the facts and information found that the assessee has sold gold jewellery for Rs. 3,38,800 (125.480 gram) on 22.03.2017 and Rs. 2,90,400/- (105.980 gram) on 30.03.2017 to M/s. Satya Peditjewellers and the AO found that the assessee has not offered capital gains on the sale of the jewellery and therefore issued show cause notice. In compliance, the assessee has filed the information and explained that the assessee has invested the capital gains in the acquisition of the flat and through oversight the capital gain was not considered in the return of income. The AO has considered the computation of capital gains statement where the assessee has disclosed the long term capital gains of Rs.1,38,044/- reinvested into the acquisition of the property. The AO was not satisfied with the explanations and is of the opinion that no documentary evidence has been submitted by the assessee to support the claim and also the assessee

has not fulfilled the conditions for claiming deduction u/sec54F of the Act. In the absence of the documentary evidence, the gains on sale of gold ornaments is treated as short term capital gains and no deduction of cost acquisition was granted and made an addition of short term capital gains of Rs. 6,29,200/- and determined the total income of Rs. 10,35,696/- and passed the order u/s 143(3) of the Act dated 18.12.2019.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the scrutiny assessment but has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing the Ld.AR has pressed the only the ground of appeal with respect to allowing of the cost acquisition and has not pressed the ground of appeal nos. 1 & 2. The Ld.AR mentioned that the CIT(A) has erred in dismissing the appeal without

considering the facts that the assessee has sold the gold jewellery and the jewellery was disclosed by the assessee in wealth tax returns filed in the earlier assessment years and substantiated the submissions with the evidences in the paper book and prayed for allowing the appeal. Contra, the Ld. DR supported the orders of the lower authorities.

5. Heard the rival submissions and perused the material on record. The sole grievance of the assessee that the AO has treated the sale of the gold jewellery as short term capital gains and has not allowed the deduction of cost acquisition. The Ld.AR emphasized that capital gains cannot be computed without giving deduction for cost acquisition and substantiated that the assessee is holding the gold jewellery from earlier years and demonstrated the copy of wealth tax return filed for the A.Y 2015-16 placed at page 15 to 19 of the paper book and as per the balance sheet the assessee has disclosed the gold jewellery which includes necklace, kada, rings, bracelet. The contentions of the Ld.AR are that the assessee was holding the traditional gold jewellery from the earlier years and the assessee has disclosed these facts from

A.Y.2010-11 till A.Y.2015-16 in the wealth tax returns
The Ld. DR submitted that the assessee should submit some proof that it was acquired at particular value. On perusal of the facts and documents filed in the course of hearing it is undisputed fact that the assessee is assessed to wealth tax and the assessee has been disclosing these vital facts in the balance sheet for the F.Y 31.03.2015, 31.03.2016 & 31.03.2017. Further in comparison to the jewellery held by the assessee, the assessee has sold only 231 grams during the F.Y 2016-17 and the assessee has disclosed the facts of holding of 2,735 grams of Gold jewellery ornaments in the wealth tax return filed for A.Y.2015-16. Prima-facie it cannot be disputed, that the assessee is not a owner of the gold jewellery and the assessee is entitled for claim of deduction of cost acquisition, where the assessee has already filed the list of assets for the purpose of computation of income.

6. Hence considering the facts and circumstances that there is no dispute that the assessee is holding the gold jewellery from the earlier years as per the information submitted in the course of hearing and

supported the evidences. Accordingly, the order of the CIT(A) is set aside and restore this disputed issue to the file of the Assessing officer to allow the deduction of cost of acquisition based on the average value of jewellery disclosed in the wealth tax returns and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 22.12.2022.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22.12.2022

KRK, PS

आदेश की प्रतिलिपि अग्रहित/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