

**IN THE INCOME TAX APPELLATE TRIBUNAL
 [DELHI BENCH : "F" NEW DELHI]**

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 7995/DEL/2019 (A.Y 2017-18)

Ms. Poonam Malhotra, Prop. M/s. Poonam Deep Buillions and Jewellers, D-58, Upper Ground Floor, Kamla Nagar, Delhi - 110 007. PAN No. AAJPM4153D	Vs.	DCIT, Central Circle : 4, New Delhi.
---	-----	--

AND

I.T.A. No. 8081/DEL/2019 (A.Y 2017-18)

ACIT, Central Circle : 4, New Delhi. (APPELLANTS)	Vs.	Ms. Poonam Malhotra, 5562/4, New Chandrawal, Gali No. 4, Delhi-110 006. PAN No. AAJPM4153D (RESPONDENTS)
---	-----	--

Appellant by	Shri Ved Jain, Advocate; & Shri Aman Garg, C. A.;
Respondent by	Shri T. Kipgen, [CIT] - D. R.;

Date of Hearing	30.11.2022
Date of Pronouncement	28.02.2023

ORDER**PER YOGESH KUMAR U.S., JM**

These two cross appeals are filed by the assessee and the Revenue for assessment year 2017-18 against the common order of the Id. Commissioner of Income Tax (Appeals)-23, New Delhi, dated 31.07.2019 respectively.

I. T. A. No. 7995/DEL/2019 (by the Assessee)
Assessment Year : 2017-18

2. The assessee has raised the following substantive grounds of appeal :-

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.39,45,052/- on account of suppressed of profit in the purchases made by the assessee.*

(ii) That the above addition has been confirmed arbitrarily estimating the profit percentage of 2% and 3% without there being any basis of the same.

(iii) That the above addition has been confirmed rejecting the detailed submissions and explanations made by the assessee in this regard.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the AO has erred in making the addition without taking the enquiry initiated by him by issue of notices to a logical end.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee in ignoring the fact that the quantity purchased and sold being completely tallying, the allegation that the assessee has not made purchases cannot be sustained.*
5. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.18,76,069/- on account of jewellery found during the course of search.*

(ii) *That the above addition has been confirmed rejecting the detailed submissions and explanations made by the assessee in this regard.*
6. (i) *On the facts and Circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs.2,00,000/- on account of deduction claimed by the assessee under section 24(b) of the Income Tax Act.*

(iii) *That the above disallowance has been confirmed rejecting the detailed submissions and explanations made by the assessee in this regard.*
10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above additions*

by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.”

I. T. A. No. 8081/DEL/2019 (by the Revenue)
Assessment Year : 2017-18

3. The Revenue has raised the following substantive grounds of appeal :-

“1. That the order of the Ld. CIT (Appeals) is not correct in law and on facts.

2. The Ld. CIT (Appeals) has erred in deleting the addition of bogus purchase of Rs.17,00,44,427/- on account of unverified parties which were remained unverifiable at remand stage also.

3. The Ld. CIT (Appeals) erred in ignoring the facts mentioned in Assessment Order as well as in remand report that purchases of Rs.17,39,89,479/- remained unverified.

4. The Ld. CIT (Appeals) erred in not upholding the entire addition on account of unverified bogus purchases and applying estimation of profit out of bogus purchases. “

4. Brief facts of the case are that, the assessee filed original return declaring total income of Rs.12,93,570/- which was processed u/s 143(1) of the Act at the returned income. Consequent to the search conducted u/s 132 of the Act where certain papers/documents belongs to the assessee were found and seized. The assessment order came to be passed u/s 143 (3) of the Act by disallowing Rs. 2,00,000/- on account of deduction claimed by the assessee

u/s 24(b) of the Act, made addition on account of bogus purchase of Rs. 61,53,97,003/- and also made addition of Rs. 18,76,069/- on account of unexplained jewelry u/s 69A of the Act.

5. As against the assessment order dated 31/12/2018, the assessee preferred an appeal before the CIT(A) and the CIT(A) vide order dated 31/07/2019, confirmed the addition of Rs. 39,45,052/- on account of suppressed of profit, confirmed the addition of Rs. 18,76,069/- on account of jewellery found during the course of search and further confirmed the disallowance of Rs. 2,00,000/- claimed as deduction by the assessee u/s 24(b) of the Act.

6. Aggrieved by the order of the Ld.CIT(A) in sustaining the above additions, the assessee has preferred the appeal in ITA No. 7995/Del/2019 and as against the deletion of the additions, the Revenue has preferred the appeal in ITA No. 8081/Del/2019 on the grounds mentioned above.

7. Ground No. 1 of the assessee is general in nature which requires no adjudication.

8. The issue involved in the Ground No. 2 to 4 of the Assessee's appeal and Ground No. 2 & 3 of the Revenue's appeal are in respect of the addition of unverified purchases, therefore, these grounds are dealt together.

9. In the year under consideration, the assessee made purchases of Rs. 1,25,43,40,731/-. During the course of the assessment proceedings, the Ld. A.O. asked the assessee to submit the details in relation to all the purchase parties. The assessee submitted certain documents regarding the details of the purchase parties. The A.O. had issued notice u/s 133(6) of the Act to 20 parties, out of which few have replied and few have not replied even after receipt of the notice and few of them have not been served with the notice. The

A.O. concluded the assessment by making additions of Rs. 61,53,97,003/- out of total purchases of Rs. 1,25,43,40,731/- wherein the A.O. made addition in respect of those parties whose notices were either not served or the parties where the notices were served but reply was not received by the A.O.

10. During the appellate proceedings before the CIT(A), the assessee filed an application under Rule 46A of Income Tax Rules for admission of additional evidences i.e purchase ledger, party wise ledger, confirmation and e-mails received from the parties. The CIT(A) has called for remand report and during the remand proceedings, the A.O. re-issued the notices to all the parties whom either the reply was not received or notices were not served. The Ld. A.O. in the remand report, has concluded that all the parties of Assessment Year 2017-18 may be treated as verified except three parties i.e M/s Krizz Unit of Kanishk Gold Pvt. Ltd; Rs. 12,74,63,261/-, M/s Shreyansh Industries; Rs. 1,80,76,200/- and M/s Wellknown Jewellers Pvt. Ltd; Rs. 2,84,50,018/-. The Ld. A.O. has also mentioned in the remand report that these parties were existed around three years back, however, were not present as on the date of remand report. The CIT(A) after considering the remand report held that most the question can be raised about the rate of purchase and thereafter estimated the rate on ad-hoc basis as the suppressed profit in these unverified purchases. Thus, confirmed the addition of Rs. 39,45,052/- (2% of 12,74,63,261 + 3% of 1,80,76,200/- + 3% of 2,84,50,018/-) and deleted the balance additions.

11. Aggrieved by the above additions estimated by the CIT(A), the assessee has preferred the appeal and the Revenue is in appeal against the remaining deletion of the addition.

12. We have heard the parties perused the material available on record and gave our thoughtful consideration. It is the specific case of the assessee that

books of account of the assessee has neither been rejected by the A.O. nor rejected by the Ld.CIT(A). The assessee is regularly maintaining the stock records and no adverse comment has been made by the Lower Authorities. Further, the sales made by the assessee have also been accepted by the Ld. A.O. there is no allegation or finding of the A.O. nor there is any information received from the Investigating Wing that the assessee has arranged any accommodation entry. It is further the case of the assessee that, the assessee has filed all the documents and no defect has been point out by the Lower Authorities. The books of account of the assessee are duly audited. The creditors were either paid current or subsequent year and further contended that all the payments have been made through banking channel, therefore, the CIT(A) has committed an error in sustaining the above said addition.

13. It is not in dispute that out of twenty creditors, three creditors have not been identified and the additions have been made. To meet the ends of justice, we are of the opinion if the assessee is provided with an opportunity to produce the three parties before the A.O. who have been treated as unverified by the A.O. during the remand proceedings and direct the A.O. to decide the same on merit, the substantial justice will be rendered. Accordingly, we direct the Assessee to produce before the A.O. of three parties who have been treated as unverified by the A.O. during the remand proceedings to prove the existence of the parties at the relevant point and also to prove the genuineness of the transaction.

14. Accordingly, Ground No. 2 to 4 of the assessee and Ground No. 2 & 3 of the Revenue are partly allowed for statistical purpose.

15. Ground No. 5 of the assessee is regarding addition of Rs.18,76,069/- made on account of jewellery found during the search. During the course of search the following jewellery found and seized:-

56.3 The position in respect of Jewellery found and seized is as under:

Particulars	Locker No. AD-00253	Locker No. 1159	Residence Valuation Report-1	Residence Valuation Report-1	Total
Total Jewellery Found	1,876.62	420.65	438.65	360.15	3,095.90
Value as per Valuation report (in Rs.)	51,42,853	11,29,980	10,89,586	19,35,118	92,97,537
Jewellery related to business found and released	1,213.59	270.57	-	-	1,484.16
Balance Jewellery which relates to family of the assessee	663.03	149.91	438.65	360.15	1,611.74
Out of above, Jewellery related to assessee's family found and released	-	-	438.65	360.15	798.80
Total Jewellery seized	663.03	149.91	-	-	812.94
Value as per Valuation report (in Rs.)	18,76,069	4,41,008	-	-	23,17,077
Addition made	Addition of Rs.18,76,069/- in the hands of Poonam Malhotra	Addition of Rs.4,41,008/- in the hands of Pradeep Malhotra			Protective addition of Rs.23,17,077/- in the hands of Sanjay Malhotra

16. The Ld. A.O. made no addition in respect of jewellery of 798 grams (net) (438.65 grams and 360 grams as per valuation reports) by following the CBDT Instruction 1916 dated 11/05/1994 and also the ratio laid down by the Hon'ble High Court of Delhi in the case of Ashok Chadda Vs. ITO (2011) 14 Taxman.com 57(Delhi). It is the case of the assessee is that further allowance should be given in respect of jewellery of Ms. Meenu Malhotra (daughter of the assessee). The CIT(A) while analyzing the marital status of Ms. Meenu

Malhotra, and residing address, statements etc., rejected the contention of the assessee in following manners:-

“56.6. It is a fact that Ms. Meenu Malhotra is married daughter of the appellant. She staying at Bhiwani. As stated above, during the present proceedings, the AR was asked to state if in any of the statements recorded during the search, any mention was made to the effect that any part of Jewellery found belonged to Ms. Meenu Malhotra. The AR answered in negative. Also, the perusal of valuation reports prepared in respect of Jewellery found at the residence, It is seen that the -valued(found) jewellery was stated to be belonging to Smt. Shivani Malhotra. Sanjay. Malhotra and Poonam Malhotra. As per statement of Sh. Pradeep Malhotra dated 13.01.2017, the family members have been stated to be Sh. Pradeep Malhotra, Smt Poonam Malhotra, Sh. Sanjay Malhotra and Smt. Shivani Malhotra and the Jewellery in bank lockers have been stated to be belonging to these above said four family members. It is noteworthy that nowhere, the appellant mentioned name of Ms. Meenu Malhotra. During the present appellate proceedings, in this regard, as mentioned earlier, the appellant requested to allow introduction of additional evidence, however, this request was rejected.

56.7 Assessment of Shri Sanjay Malhotra(appellant's son) was also made by the same AO and appeal in that respect are being decided by thp unriprsinnpri Shri Sanjay Malhotra has taken a position that he or his wife (Smt nothing to do with the Jewellery found at the residence or bar confronted with this stand. The AR stated that it is because between father and son. The AR could not answer to the query as to how an allowance can be given in respect of a person

who is not claiming the same.

56.8. In the above scenario, the allowance of jewellery of 798 gms (net) 438.65 gms and 360 gms), as per valuation report-1 and valuation report-2, respectively found at residence), in hand of the assessee and his wife, appears to be quite reasonable.

“56.9 Therefore, I do not see any infirmity in action of the AO, in terms of rejecting the claim of the appellant and making the impugned addition.

17. Considering the fact that the daughter of the assessee Ms. Meenu Malhotra is married and staying separately at Bhiwani, the assessee has not made available of any statement recorded during the search and has no mention has been made to the effect that the part of the jewellery found was belonged to Ms. Meenu Malhotra and as per the valuation report the valued jewellery was stated to be belongs to Smt. Shivani Malhotra, Sh. Sanjay Malhotra and Mrs. Poonam Malhotra which has been corroborated with the statement of Sh. Pradeep Malhotra dated 13/01/2017. Therefore, the Lower Authorities have rightly allowed the jewellery of 798 grams (Net) in the hand of the assessee which is reasonable and we find no reason to interfere with the same. Accordingly, the Ground No. 5 of the assessee is dismissed.

18. Ground No. 6 is regarding disallowance of Rs. 2,00,000/- on account of interest paid on housing loan. The assessee in the return of income claimed the deduction of Rs. 2,00,000/- u/s 24(b) of the Act on account of interest paid on housing loan. The assessee has not produced interest certificate before the A.O. , therefore, the same has been disallowed. During the appellate proceedings before the CIT(A), the assessee has submitted the interest certificate as additional evidence under Rule 46A of Income Tax Rules which has been rejected by the CIT(A). The assessee has produced the Interest

Certificate issued by the Bank at Page No. 342 of the Paper Book. Considering the fact that the assessee has produced the interest certificate before the CIT(A) and as per the assessee, the same could not be produced before the A.O. due to paucity of time. Since, the claim made by the assessee is valid claim supported by the documents i.e. certificate issued by the bank, in the absence of any contrary evidence the CIT(A) ought to have admitted the additional evidences and deleted the addition. Therefore, we deem it fit to delete the addition of Rs. 2,00,000/- made by the A.O. which was confirmed by the CIT(A) on account of interest paid for housing loan. Accordingly, we allow the Ground No. 6 of the assessee.

19. In the result, the appeal of the assessee in ITA No. 7995/Del/2019 and the Appeal of the Revenue in ITA No. 8081/Del/2019 is also partly allowed for statistical purposes.

Order pronounced in the Open Court on : 28th 02.2023.

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 28/02/2023

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

R. N, Sr. PS

Copy forwarded to :

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

