

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K., JM & Shri Laxmi Prasad Sahu, AM

ITA No.1013/Bang/2022 : Asst.Year 2014-15

Mr. Ullal Kakketota Bava 20-8-464, Gujarath Sea Foods Goods Shed Road Bunder Mangaluru-575 001 PAN : ACZPK8448F	v.	DCIT, CC-1 Albuquerque House Opp.Forum Mall Pandeshwar Mangaluru-575 001
(Appellant)		(Respondent)

Appellant by : Sri Surya Tejas, Advocate

Respondent by : Sri. Sunil Kumar Singh, CIT-DR

Date of Hearing : 16.03.2023	Date of Pronouncement : 17.03.2023
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ORDER

Per Laxmi Prasad Sahu, AM :

This is an appeal filed by the assessee against the order passed by the Commissioner of Income tax (Appeals)-2, Panaji dated 11.08.2022, DIN No. ITBA/APL/M/250/2022-23/1044064853(1) for the assessment year 2014-15 with the following grounds of appeal:-

- 1. The learned CIT(A)-2, Panaji erred in Passing the Order in the manner he did.*
- 2. The learned CIT(A)-2, Panaji erred in upholding the additions made by the Assessing Officer amounting to Rs.6,81,805/-as unaccounted purchase of golds, based on the loose sheet founds at the time of search, for want of sources for purchase of gold.*

3. The learned CIT(A)-2, Panaji has ought to have appreciated the fact that, an addition cannot be made on the basis of suspicion and guesswork and without bringing corroborative material on record.

4. The learned CIT(A)-2, Panaji, has failed to appreciate the creditworthiness of the Appellant as well as the fact that, the appellant has declared substantial income and cash withdrawal or drawings made, which ought to have treated by the Assessing Officer as sources for purchase of gold .

5. The leaned CIT(A)-2, Panaji has erred in relying on various case laws, which are not at all applicable to the Appellant's case.

6. The Appellant craves leave to add, amend or alter any of the forgoing grounds.

2. The brief facts of the case are that the assessee is an individual carrying business of trading in fish & also a partner in the M/s. Niyaz Sea Foods, M/s. Jewel House & M/s. U.K. Ice and Cold Storage. The assessee filed his return of income on 10.10.2014 declaring a total income of Rs. 31,38,400/- u/s. 139(1) of the I.T. Act. The return was processed u/s. 143(1) of the Act. A search and seizure operation u/s. 132 of the Act was carried out on 08.02.2018 at the business as well as residential premises of the assessee. During the course of search and seizure operations, certain incriminating materials were found and seized and Rs. 66.00/- lakhs cash was seized from the residence of the assessee. The assessee was issued notice u/s. 153A of the Act on 14.01.2019 for filing return of income. In response to the notice, the assessee filed return of income on 22.02.2019 declaring income of Rs. 31,30,100/-. Subsequently, other statutory notices were issued to the assessee. During the search, certain bills regarding purchase of golds were found at the residence of the assessee. In reply to question No.10 of the statement recorded on 08.02.2018 during the search operations, the assessee stated that the gold purchases were made for gifting to his granddaughter but

had not explained the source for the purchase of these golds. The following bills evidences the purchase of golds:-

<i>Sl.No.</i>	<i>Date</i>	<i>Amount</i>	<i>Mode of payment</i>
<i>1</i>	<i>20.09.2013</i>	<i>1,62,000</i>	<i>cash</i>
<i>2</i>	<i>20.09.2013</i>	<i>3,73,805</i>	<i>cash</i>
<i>3</i>	<i>20.09.2013</i>	<i>1,46,000</i>	<i>cash</i>
	<i>TOTAL</i>	<i>6,81,805</i>	

2.1 During the course of assessment proceedings, the AO noted that the above purchase of golds were not recorded in the books of accounts & satisfactory explanations were also not offered by the assessee. Accordingly, it was added into the total income of the assessee u/s. 69A of the Act.

3. Aggrieved from the above order of the AO, the assessee filed appeal before the Id.CIT(A) and the Id.CIT(A) after relying on many case laws, confirmed the order of the AO.

4. Aggrieved from the above order of the Id.CIT(A), the assessee filed appeal before the Income tax Appellate Tribunal.

5. The Id.AR reiterated the submissions made before the lower authorities and he further submitted that the assessee will get benefit of CBDT instruction No.1916 dated 11.05.1994, whereas the revenue authorities have not granted the benefit of this instruction issued by the CBDT and the amount of investment was made only Rs. 6,81,805/-. The assessee is earning sufficient income and the assessee purchased the gold from unutilized past savings and drawings. He also submitted that during the course of search and seizure operations, no other golds were found, which was unrecorded by the assessee.

6. On the other hand, the ld.DR relied on the order of the lower authorities and he submitted that the assessee had not recorded the purchase of golds in its books of accounts and the source was also not explained during the course of assessment proceedings as well as during the search proceedings. Therefore, the CIT(A) has rightly confirmed the appeal in favour of the revenue for addition made u/s 69A of the Act.

7. After hearing the rival contentions, we noted that during the course of search u/s.132 of the Act conducted 08.02.2018, three gold bills noted (supra) were found, which was not recorded in the books of accounts of the assessee and the source also could not be explained during the course of assessment proceedings as well as during the course of search. Therefore, the AO treated it as unexplained investment. On perusal of the assessment order, the addition made by the AO is only for the unexplained investment in the gold purchases. We found substance on the submission of the ld.AR. The Assessing Officer has got the benefit of the CBDT Instruction No.1916 dated 11.05.1994, which was suppose to be followed by the revenue authorities. It is a settled law that the circulars/instructions issued by the CBDT is binding on the revenue. This position was confirmed by the Hon'ble Apex Court in the case of Commissioner of Customs vs. Indian Oil Corporation Ltd., reported in [2004] 136 taxman 491/267 ITR 272. During the course of hearing, the ld.AR submitted that there were female family members also in his family but he was not able to prove number of family members of the assessee, accordingly, the assessee is eligible for the benefit of the instruction noted (supra). Since in this case, it is not clear as how many family members are in the family of the assessee and quantity of gold purchased also.

Therefore, considering the facts of the case, we are remitting this issue to the file of the AO for giving benefit of the instruction noted above and the assessee is directed to submit the proof of the member of family members of the assessee for the impugned assessment year and the AO is directed to follow instructions issued by the CBDT for granting benefit of the instructions.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 17th day of March, 2023.

Sd/-
(George George K.)
JUDICIAL MEMBER

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Bangalore; Dated : 17th March, 2023.
Thirumalesh, Sr.PS/Vms

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr.CIT(Central), Bengaluru.
4. The DR, ITAT, Bengaluru.
5. Guard File.

Asst.Registrar/ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	Date of uploading the order on website			
8.	If not uploaded, furnish the reason			
8.	File sent to the Bench Clerk			Sr.PS
9.	Date on which file goes to the AR			
10.	Date on which file goes to the Head Clerk.			
11.	Date of dispatch of Order.			
12.	Draft dictation sheets are attached			Sr.PS