

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS.SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

(conducted through virtual hearing)

ITA No.185/Ind/2022
Assessment Year: 2020-21

Chandrakanta Rathore 1, Laxmiganj, Guna	बनम/ Vs.	Pr. CIT-(Central) Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AGMPR 5825 J		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	21.03.2023	
Date of Pronouncement	31.03.2023	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 13.05.2022 passed by learned Pr. Commissioner of Income-Tax, Central, Bhopal [**Ld. PCIT**] u/s 263 of Income-tax Act, 1961 [**the Act**], which in turn arises out of assessment-order dated 23.09.2021 passed by learned ACIT, Central, Gwalior [**Ld. AO**] u/s 143(3) for Assessment-Year [**AY**] 2020-21, the assessee has filed this appeal on the grounds raised in Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that a search u/s 132 was conducted upon assessee on 09.01.2020 wherein 5001.21 grams of jewellery was found in possession of assessee. Thereafter, the assessee filed return of income which was subjected to scrutiny and the Ld. AO passed assessment-order u/s 143(3) after accepting a total of 3907.58 (2500 + 731.77 + 500 + 175.81) grams of jewellery as explained and making addition of remaining 1093.62 grams of jewellery as unexplained. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by Ld. AO is erroneous in so far it is prejudicial to the interest of revenue, which attracts revisionary-jurisdiction u/s 263. The reason of framing such a view, as marshalled from the show-cause notice dated 01.04.2022 issued by Ld. PCIT, is such that the AO has wrongly accepted 2500 + 731.77 grams of jewellery as explained due to following reasons:

- (i) The assessee has provided a will dated 16.11.1982 executed by Shri Ramlal Rathore (her grandfather-in-law) through which Shri Ramlal Rathore has given 1250 grams of jewellery to assessee/husband of assessee. Further, the assessee has provided another will dated 30.08.1985 executed by Smt. Laxmi Bai Rathore (her grandmother-in-law) through which Smt. Laxmi Bai Rathore has given another 1250 grams of jewellery to assessee/husband of assessee. Thus, the assessee has shown a total of 2500 grams (1250 + 1250) of jewellery having been received under two wills, but (i) those wills were not produced in original; (ii) stamp duty is not mentioned on the back pages of wills; and (iii) the wills were not found during search-proceeding. Ld. PCIT further observed that the AO has not made extensive verification from the office of Registrar about the veracity and execution of those wills.
- (ii) The assessee also claimed that a total of 1829.43 grams of jewellery was received by way of gifts on various occasions of family members, birthday, marriage anniversary, etc. In absence of full details, Ld. AO

has accepted 40% of 1829.43 i.e.731.77 grams of jewellery having been received by way of such gifts and thus explained. The reasoning accepted by AO is a conjecture and surmise and does not find any support in any provision under the Act especially in absence of any supporting documentary evidence.

4. By aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised. In response thereto, the assessee filed a detailed reply which is re-produced by PCIT in Para No. 2 of the revision-order.

5. However, none of those submissions impressed the Ld. PCIT. The Ld. PCIT further observed that since the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

“Explanation 2 – “For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner or Commissioner -

- (a) The order is passed without making inquiries or verification which should have been made;*
- (b) The order is passed allowing any relief without inquiring into the claim;*
- (c)*
- (d) ...”*

6. Finally, Ld. PCIT concluded that there was a complete lack of enquiry on the part of AO; therefore the assessment-order is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, he passed revision-order u/s 263 whereby the assessment-order was set aside and AO was directed to re-do assessment.

7. Aggrieved by such revision-order, the assessee has filed this appeal.

8. By means of various grounds raised in Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

Submission of Ld. AR:

9. Ld. AR straightaway carried us to Page No. 9 to 16 of the assessment-order which contains the detailed submissions made by assessee to AO *qua* the sources of jewellery and the elaborate findings/conclusions made by Ld. AO thereon. For the sake of immediate reference, we re-produce below these pages of assessment-order:

“7.0 Unexplained Jewellery

7. During the course of search operation at Bhajan Seth Ki Kothi, Sisodiya Colony, Guna (DR-1), gold jewellery of worth 2,01,78,447/- (5,098.21 gms.) and silver articles of worth 2,09,929/- (6,444.90 gms) was found in the assessee's bedroom.

7.2 Vide questionnaire u/s 142(1) of the Income Tax Act, 1961 dated 23/07/2021, the assessee was asked to furnish the source of jewellery purchase with bills/voucher, wealth tax returns etc. and reconcile the same investment with the books of account and related bank statements etc. In response, it was stated by the assessee that the source of jewellery was the gifts received on the occasion of marriage, birthdays and other family occasions. Besides, jewellery weighing 2,500 grams was received by will of grandparents of Shri Ghanshyam Rathore, the husband of the assessee. Further, vide show cause notice 10.09.2021, the assessee was again specifically asked to provide the details of persons who have gifted jewellery on various occasions along with their Name, PAN, Address and their confirmation. The assessee was also asked to furnish copy of will, if any.

73 In compliance of above issue, the assessee has filed his reply on 31.08.2021 & submitted that 5602.54 grams jewellery was found from the bedroom of the assessee and claimed that 5001.21 grams belongs to her and 601.33 grams belong to her spouse Shri Ghanshyam Rathore. The same reply of the assessee is reproduced as under:

"In this regards it is submitted that the jewellery Seized belongs to the

assessee namely Mr. Ghanshyam Rathore & Mrs Chandrakanta Rathore, Mr. Vinod Rathore & Mrs Sunita Rathore and Mr. Prem Narayan Rathore & Mrs Kapun Bal Rathore. The Assessee wise net weight of jewellery found and seized details are as under:

Name of the Assessee	Jewellery Found (Net wt. in grams) (A)	Jewellery Seized (Net wt. in Grams) (B)	Jewellery Released (Net Wt. in Grams) C=(A-B)	Permissible holding as per circular no.1916 dated 11.05.1994 (Net wt. in Grams (D)	Remarks
Mr. Ghanshyam Rathore & Mrs. Chandrakanta Rathore	5602.54	4353.05	1249.49	1450	This jewellery was found from Bedroom of Mr. Ghanshyam Rathore and Mr. Chandrakanta Rathor and from Bedroom of Mr. Nitin Rathore and Seema Rathore. Also Jewellery wearing on body of Mr. Ghanshyam Rathore, Mrs. Chandrakanta Rathore and mrs. Seems Rathore
Mr. Vinod Rathore & Mrs. Sunita Rathore	5723.40	5146.20	577.20	1050	This jewellery was found from the bedroom of Mr. Vinod Rathore and Mrs. Sunita Rathore. Also

					Jewellery Wearing on Body of Mr. Karan Rathore and Mrs. Sunita Rathore
Mr. Premnarayan Rathore & Mrs. Kapuri Bai Rathore	815.20	323.80	491.40	600	This jewellery was found from bedroom of Mr. Prem Narayan Rathore and Mrs. Kapuri bai Rathore. Also jewellery wearing on body of Mr. Premnarayan Rathore and mrs. Kapuri Bai Rathore
Total	12141.14	9823.05	2318.10	3100.00	

The calculation of holding of jewellery as per Circular no.1916 dated 11.05.1994 in case of the assessee and here family members is as under:

Name of Parties	Relation with the assessee	Permissible holding of jewellery as per CBDT Circular no 1916 dated 11.05.1994 in Grams
Mrs. Chandrakanta Rathore	Self	500
Mr. Ghanshyam Rathore	Spouse	100
Mr. Nitin Rathore	Son	100
Mrs. Seema Rathore	Daughter-in-law	500

<i>Miss Muskaan Rathore</i>	<i>Daughter</i>	<i>250</i>
<i>Total</i>		<i>1450</i>

Out of above 5602.54 Grams Jewellery, 5001.21 Grams Jewellery Belong to the assessee and the balance 601.33 Grams Belongs to her spouse Mr. Ghanshyam Rathore. It is to submit that Mr. Ghanshyam Rathore is holding the said gold in form of bullions.

It is submitted that the assessee belongs to a joint wealthy and reputed family. Gifting the jewellery to and by each family members and relative is a part of their customary practice. Due to large family structure, the assessee has received jewellery as gifts on the various occasions such as on her marriage and birth of her children and also gifts were received on marriage anniversary, birthdays of children, etc.

The Family has following HUF which are assessed to Tax:

<i>Name of HUF</i>	<i>Relation with Karta</i>	<i>PAN</i>	<i>Date of incorporation</i>
<i>Ram Lal & Sons HUF</i>	<i>Grand Father-in-law</i>	<i>AAPHR4612E</i>	<i>15.11.1936</i>
<i>Prem Narayan Rathore HUF</i>	<i>Father-in-law</i>	<i>AABHP1976K</i>	<i>02.12.1965</i>
<i>Ghanshyam Rathore, HUF</i>	<i>Brother-in-law</i>	<i>AADHG5038F</i>	<i>23.11.1987</i>
<i>Vinod Kumar Rathore HUF</i>	<i>Spouse</i>	<i>AADHV7956H</i>	<i>13.02.1996</i>
<i>Nitin Rathore HUF</i>	<i>Nephew</i>	<i>AAKHN0938E</i>	<i>12.05.2019</i>

Thus, the jewellery belongs to the family members. All the family members as well as the HUF are regularly assessed to tax. Following table is provided for justifying the linking of acquisition of jewellery with the vent and concerned period.

<i>Sr. No.</i>	<i>Event or occasion</i>	<i>Quality of the jewellery received/acquired(Net</i>	<i>Date on which jewellery was</i>
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		<i>wt. in grams)</i>	<i>received/ acquired</i>
1.	<i>On the marriage</i>	500	23.11.1987
2.	<i>On birth of Priya Rathore (Daughter)</i>	150	26.01.1989
3	<i>On Birth of Nitin Rathore (Son)</i>	100	18.12.1991
4.	<i>On Birth of Muskan Rathore (Daughter)</i>	100	17.01.1998
5	<i>On marriage of Priya Rathore</i>	250	25.04.2012
6	<i>On marriage of Nitin Rathore</i>	500	12.05.2019
7.	<i>From the Spouse which he has received from his grand Father (Late shri Ram Lal Rathore) under as will</i>	1250	23.11.1987
8.	<i>From the Spouse which he has received from his Grand Mother (Late Smt. Laxmi Bai Rathore) under a will</i>	1250	23.01.2017
9.	<i>On the occasion of marriage anniversaries, birth of the children</i>	229.43	<i>On various dates</i>
10.	<i>Gold Coin/ Bullion acquired from the household savings and from the income of the HUF's</i>	495.97	<i>On various dates</i>
9.	<i>Gold purchased</i>	175.81	<i>63.89 Grams purchased on 20.01.2018. 56.32 grams jewellery purchased on</i>

			01.02.2018, 55.60 grams jewellery purchased on 05.03.2018. Copy of invoices are attached as Annexure B
	Total	5001.21	

Copy of affidavit of the assessee in respect of source and quantity of holding of gold is attached as Annexure C and Copy of affidavit of the spouse of the Assessee in respect of handing over of jewellery to the assessee and its source is attached as Annexure D.

Thus, in view of it submitted that the jewellery found in case of assessee, was very nominal, and was very much reasonable keeping in mind the richness, high family status and more customary practices in her family.

Further it is submitted that jewellery mentioned at above table at S.no. 7 and 8 has been received by the assessee from his spouse (Mr. Ghanshyam Rathore) and Mr. Ghanshyam Rathore has received the said jewellery under the will from his grandparents details of the same is as under,

<i>Name of Grand Parents</i>	<i>Quantum of jewellery received</i>	<i>Date of death of the grand parents</i>	<i>Date of transfer of jewellery to spouse (Mrs. Chandrakanta Rathore)</i>	<i>Copy of Will attached</i>
<i>Late Shri Ramlal Rathore</i>	<i>1250</i>	<i>23.12.1982</i>	<i>13.02.1996</i>	<i>As Annexure E</i>
<i>Late Smt. Laxmi Bai Rathore</i>	<i>1250</i>	<i>23.01.2017</i>	<i>23.01.2017</i>	<i>As Annexure F</i>
<i>Total</i>	<i>2500</i>			

It is worthwhile to mentioned that both grandparents were the income tax and wealth tax assessee. Copy of their wealth tax returns are enclosed as Annexure G.

It is submitted that all the family members including family HUF's are income-tax

assessee and are filing high value income-tax return. Thus, considering the status of the family the holding of the jewellery by the assessee and her family members are very much reasonable.

Further, it is submitted that the marriage of the assessee has taken place 33 years prior to the date of search and the jewellery received in form of streedhan on the other occasions as explained above. Thus, holding of 5001.21 grams jewellery is very reasonable.”

Vide reply dated 14.09.2021, the assessee has again tried to explain the jewellery. The reply is reproduced as under:

“The assessee has acquired/received the jewellery on various occasions. The details of the event and occasions along with details of supporting documents is as under:

Sr. No.	Event or Occasion	Quantity of the jewellery received/acquired. Net wet in grams)	Details of Documentary Proof
1.	On the Marriage	500	Received as Streedhan
2	On birth of Priya Rathore (Daughter)	100	Received from various relatives in small- small quantities. Long time has been elapsed from the date of the event. Thus, it is not possible to submit details of the person who gifted the jewellery
3.	On birth of Nitin Rathore (Son)	100	Received from various relatives in small small quantities. Long time has been elapsed from the date of the event. Thus, it is not possible to submit details of the person who gifted the jewellery
4.	On Birth of Muskan Rathore(Daughter)	100	Received from various relatives in small small quantities. Long time has been elapsed from the date of the event. Thus, it is not possible to submit details of

			<i>the person who gifted the jewellery</i>
5.	<i>On marriage of Priya Rathore</i>	250	<i>Received from various relatives in small small quantities. Long time has been elapsed from the date of the event. Thus, it is not possible to submit details of the person who gifted the jewellery</i>
6.	<i>On marriage of Nitin Rathore</i>	500	<i>Received by Mrs. Seema Rathore W/o Nitin Rathore on marriage as Streedhan and also received from various relatives in small small quantities. Long time has been elapsed from the date of the event. Thus, it is not possible to submit details of the person who gifted the jewellery</i>
7.	<i>From the spouse (Mr. Ghanshyam Rathore) which he has received from his grand father (Late Shri Ram Lal Rathore) under a will</i>	1250	<i>Copy of will submitted vide our submission dated August 31,2021. Further we are submitting copy of will as annexure B for ready reference.</i>
8.	<i>From the spouse (Mr. Ghanshyam Rathore) which he has received from his grand mother (Late Smt. Laxmi Bai Rathore) under a will</i>	1250	<i>Copy of will submitted vide our submission dated August 31,2021. Further we are submitting copy of will as annexure C for ready reference</i>
9.	<i>On the occasion of marriage anniversaries, birthday of the children</i>	229.43	<i>32 Marriage anniversaries, 23 birthdays (Before marriage) of daughter Priya Rathore, 28 birthdays of son Nitin Rathore and 21 birthdays of Daughter Muskan Rathore. Thus, in total 104 events have been</i>

			<i>celebrated till the date of search</i>
10.	<i>Gold Coin/Bullion acquired from the house hold savings and from the income of the HUF's</i>	495.97	<i>A year wise chart showing income of HUF and house hold saving from A.Y.2014-15 to 2020-21 is attached as Annexure D.</i>
11.	<i>Gold purchased</i>	175.81	<i>63.89 Grams Jewellery purchased on 20.01.2018, 56.32grams jewellery purchased on 01.02.2018, 55.60 grams jewellery purchased on 05.03.2018. Copy of invoices are attached as Annexure E</i>
	<i>Total</i>	5001.21	

It is submitted that all the family members including family HUF's are income tax assessee and are filling high value income tax return Thus, considering the status of the family the holding of the jewellery by the assessee and her family members are very much reasonable.

Reliance is placed on the decision of Vibhu Aggarwal u. De (2018) 93 taxmann.com 275 (ITAT Delhi) in which It was held that where gifting of jewellery possessed by each of family members was customary and jewellery was gifted to Assessee and his wife by their parents and grandparents and other relatives at time of their marriage, and also on several occasions after that, such as birth of their two children, marriage anniversaries, etc., in view of CBDT instruction No. 1916 dated 11-05-1994 excess jewellery found was nominal, keeping in mind high status and more customary practices and stands explained.

Similar view is taken by the Honorable Delhi High Court in case of Sushila Devi vs. CIT 76 taxmann.com 163.

Reliance is also placed on the decision of Hanorable Delhi High Court in case of Ashok Chadha v. ITO (2011) 202 Taxmann195 14 taxmann.com 57 (Delhi) in which honorable High Court has accepted the jewellery of 906.60 grams in the case of married lady even without documentary evidence The court stated that collecting jewellery of 906.900 gram by a woman in a married life of 25 30 years us not abnormal. The court has held that it is a formal custom for woman to receive jewellery in the form of streedhan or on other occasions such as birth of a child etc."

7.4 The reply of the assessee is duly considered and placed on record. Facts are being discussed as under in view of the reply filed by the assessee:

- (i) The assessee has also provided copy of will dated 16.11.1982 executed by Shri Ramlal Rathore through which Shri Ramlal Rathore has divided his 2500 gram gold jewellery between his grandsons Ghanshyam Rathore and Shri Vinod Rathore. Hence, the 1250 grams jewellery of the assessee is received to her through this will and the same is verified from record.
- (ii) The assessee has also provided another will dated 30.08.1985 through which Smt. Laxmi Bai W/o Shri Ramlal Rathore has divided her 2500 gram gold jewellery between the wives of her grandsons Ghanshyam Rathore and Shri Vinod Rathore. Hence, the 1250 grams jewellery of the assessee is received to her through this will and the same is verified from record.
- (iii) The assessee has provided details of her family members which consists her son, daughter, husband, her daughter-in-law so totally 1450 grams of gold jewellery are permissible as per CBDT Circular No. 1916 dated 11.05.1994. However, the assessee has already received 2500 grams jewellery from above discussed wills which is her stree-dhan & found explained and has been given due credit so no further relief on the ground of this circular is allowable as the assessee is already given credit for very high amount of jewellery in comparison to what prescribed in the circular. However, Smt. Seema Rathore, daughter in law of the assessee also resides in same house with assessee, hence, 500 grams jewellery pertains to him as per above mentioned circular and same is treated as explained.
- (iv) The assessee has also claimed that 1829.43 grams jewellery has been received in the form of gift on various occasions as marriage of family members, birthday, marriage anniversary etc. However, the assessed has not submitted the Confirmations, Name, PAN and address of those persons. Therefore, the contention of the assessee is not found fully acceptable in this regard. However, it is presumed that some part of jewellery would have been received on these occasions, hence 40% of this 1829.43 grams jewellery i.e. 731.33 grams is further allowed and considered explained. Remaining 60%, weighing 1097.66 grams are treated as unexplained.
- (V) The assessee has also provided bills of 175.81 grams gold jewellery and bills of the jewellery has also been found and verified.

Considering the above discussion, it is crystal clear that jewellery received from both wills amounting to 2500 grams gold jewellery and all silver jewellery, 500 grams gold jewellery of Smt. Seema Rathore, 40% of jewellery received in gift amounting to 731.77 grams, 175.81 grams purchased jewellery for which bills have been produced are found explained out of total 5001.21 grams gold jewellery found during the search. Remaining 1093.62 grams gold jewellery $(5001.21 - (2500+500+731.78+175.81))$ has been found unexplained. Keeping in view of the above facts, Rs. 43,28,491/-, which is the value of 1093.62 grams gold jewellery remains unexplained jewellery of the assessee for the purpose of section 69B of the Income Tax Act, 1961 and added to the total income of the assessee for AY 2020-21. Since the addition on this point is made under the provisions of section 698 of the Income Tax Act, 1961, the

provisions of section 115BBE are applicable according to which the tax will be calculated.”

10. Analysing above, Ld. AR contended that during the course of assessment-proceeding the AO has raised queries to the assessee *qua* the sources of jewellery; the assessee has filed all details/documents; and thereafter considering the same consciously and elaborately, the AO has accepted the quantum of jewellery as explained. Clearly therefore, according to Ld. AR, this is not a case of lack of enquiry as alleged by Ld. PCIT.

11. Ld. AR also addressed the concerns raised by PCIT *qua* the receipt of jewellery under wills. *Firstly*, he submitted that the assessee has filed copy of will dated 16.11.1982 executed by Shri Ram Lal Rathore on stamp paper of “seventy five naye paise” duty witnessed by two witnesses (Page No. 26 / 28 of Paper-Book) and will dated 30.08.1985 executed by Smt. Laxmi Bai Rathore on stamp paper of “five rupees” duly witnessed by two witnesses (Page No. 29 / 31 of Paper-Book). Ld. AR submitted that the PCIT has not found that the wills are unauthentic/fake in any manner nor he has observed any fallacy or infirmity in the contents of wills; he has simply raised a concern that the original wills were not examined by AO. Ld. AR submitted that the impugned wills have been executed on stamp papers of “seventy five naye paise” and “five rupees”, those stamps were issued by Govt. treasury and acceptance of photocopies by Ld. AO without finding any fault therein is sufficient enough; Ld. PCIT’s objection is based on mere surmise and conjecture. *Secondly*, Ld. AR submitted that it is known to everyone that will is not a compulsorily registerable document under Registration Act, 1908. In fact, a will can be executed even on a plain paper and yet it is valid. Therefore, there is no question of levy of stamp-duty, registration under registration act and conducting enquiry from the office of registrar as alleged by Ld. PCIT. *Thirdly*, Ld. AR submitted that PCIT’s contention that the wills were not found during search-proceeding, is just a baseless allegation for the sake of argument but does not have worth since it is not necessary that during search, everything is found.

12. Regarding receipt of jewellery on various occasions, Ld. AR carried us to Page No. 12 and 13 of the assessment-order (already reproduced in earlier paragraph) and submitted that the assessee has supplied the details of various occasions on which the assessee received jewellery. Ld. AR submitted that the AO has, after due consideration, accepted 40% of jewellery. Ld. AR submitted that ideally AO should have accepted 100% jewellery yet in any case, for a while, acceptance of 40% cannot be said to be faulty since the same has been done after due consideration. Ld. AR submitted that it is not the case of revenue that the action of AO in accepting even 40% lacks *bonafides*.

13. Lastly, Ld. AR also submitted that in any case, the AO has applied his conscious mind and thereafter adopted one of the permissible view; hence the assessment-order cannot be said to be erroneous. To support this proposition, Ld. AR placed a heavy reliance on **Malabar Industrial Co. Vs. CIT 243 ITR 83 (SC)**:

“A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the Commissioner suo moto under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent -- if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue, recourse cannot be had to [Section 263\(1\)](#) of the Act. There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted.....The phrase prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer.

Every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

Submission of Ld. DR:

14. Per contra, Ld. DR strongly supported the revision-order. He emphasized that the AO has not verified original wills and accepted the photocopies of wills submitted by assessee and given benefit as claimed by assessee; therefore the receipt of jewellery through wills is doubtful. Then, Ld. DR also argued that the AO has accepted the assessee’s version of receiving gifts on occasions without having supportive details which is totally illegal and unjustified. Ld. DR submitted that the action of Ld. PCIT is very much in consonance with the mandate of section 263 and must be upheld.

Our analysis:

15. We have considered rival submissions of both sides and perused the case records in the light of provision of section 263 and the judicial decision placed before us. After a careful consideration, we find that in the present case, the Ld. AO has conducted sufficient enquiries *qua* the sources of jewellery and the assessee has given a thorough explanation in writing which is re-produced in assessment-order itself. It is further clear from Para No. 7.4 of assessment-order that the Ld. AO has considered one by one all submissions made by assessee and thereafter passed assessment-order wherein the receipt of jewellery by way of wills has been accepted fully and receipts of jewellery by way of gifts has been accepted partly. Thus, there

cannot be any doubt *qua* the enquiry conducted by AO. Regarding, additional concern raised by Ld. PCIT that the original wills were not produced, on perusal of photocopies of the wills placed in Paper-Book that those wills were executed on stamp-papers and duly witnessed by two witnesses. On a careful scrutiny of revision-order, we do not find any objection raised by PCIT on the contents of wills which can indicate any kind of shortcoming so as to infer that the photocopies are fake/ingenuine. Regarding next concern that the wills do not contain endorsement of stamp duty and the AO has not conducted any verification from office of Registrar, we find merit in the submission of Ld. AR that will is such a document which neither attracts stamp-duty nor requires any registration. Regarding one more concern raised by PCIT that the impugned wills were not found during search, we again find weightage in submission of Ld. AR that it is not necessary that each and every item is found during search; therefore no adverse view can be taken on that premise. Regarding receipt of jewellery on ceremonial occasions by way of gift, we find that the assessee has given complete details of occasions and the quantity received by assessee by way of gifts which are aptly re-produced in assessment-order. We also find that the AO has not accepted 100% version of assessee in this regard, he has accepted only part-version to the extent of 40% which in itself indicates that the AO has given a due consideration and taken a conscious decision in the matter. Lastly, we also agree with the submission of Ld. AR that if the AO has taken one of the possible views, the assessment-order can't be termed as erroneous; this proposition is loudly approved by Hon'ble Supreme Court in **Malabar Industrial Company (supra)** and followed in innumerable decisions of ITAT and High Courts and the same applies to present case with equal force.

16. In view of above discussions and for the reasons stated therein, we are of the considered view that in the present case, the assessment-order cannot be said to be erroneous-cum-prejudicial to the interest of revenue. Therefore, the revision action taken by Ld. PCIT u/s 263 is not warranted. Hence, we

are inclined to quash such revision-order and restore the original assessment-order. Ordered accordingly.

17. Resultantly, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 31/03/2023

Order pronounced in the open court on/...../2023

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 31 .03.2023

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	22.3.23
2.	Date of typing & draft order placed before the Dictating Member	22.3.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	22.3.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	