

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री डॉ. मनीष बोराड, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: 451/Chny/2019

निर्धारण वर्ष / Assessment Year: 2015-16

Shri. Cholaji Kanniyalal,  
No. 186, Kamaraj Street,  
Villupuram – 605 602.  
**[PAN: AAEPK-4555-E]**

Assistant Commissioner of  
v. Income Tax,  
Villupuram Circle,  
Villupuram .

अपीलार्थी की ओर से/Appellant by : Shri. S. Sridhar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 19.04.2023

घोषणा की तारीख/Date of Pronouncement : 25.04.2023

**आदेश / O R D E R**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER:**

This appeal at the instance of assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), Puducherry, dated 11.12.2019 which is arising out of the order u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 21.12.2017 framed by Id. ACIT, Villupuram Circle, Villupuram.

2. The grounds of appeal raised by the assessee reads as follows:

*"1. The order of the Commissioner of Income Tax (Appeals), Puducherry dated 11.12.2018 in I.T.A.No.73/CIT{A)-PDY/2017-18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in confirming the addition of Rs.14,582/- on the consideration of the provisions of section 69A of the Act while rejecting the explanation offered on the reconciliation of cash balance/inventories in the computation of taxable total income without assigning proper (reasons and justification.*

*3. The CIT (Appeals) erred in sustaining the estimated addition of Rs.27, 18,374/- representing the manufacturing loss to the extent of 1060.738 gms in the conversion of old gold into new gold on the presumption of collection of such wastage from the customers/sellers of old gold in the computation of taxable total income without assigning proper reasons and justification.*

*4. The CIT (Appeals) failed to appreciate that having not properly considered the explanation offered including the process of conversion and the trade practice, the sustenance of the estimated addition was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

*5. The CIT (Appeals) went wrong in recording the findings in para 5.5.6 of the impugned order in this regard without assigning proper reasons and justification.*

*6. The CIT (Appeals) erred in sustaining the addition of Rs.33,90,758/being the difference in stock based on the survey report in the computation of taxable total income without assigning proper reasons and justification.*

*7. The CIT (Appeals) failed to appreciate that the quantification of difference/the excess stock at 451 gms. was completely erroneous and ought to have appreciated that the non consideration of the reconciliation would vitiate the decision rendered in para 5.8.2 of the impugned order.*

8. *The CIT (Appeals) failed to appreciate that in any event the adoption of the value for the assessment of the presumed excess stock was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the explanation offered in this regard for proper adoption of the rate would fortify the error in the findings in para 5.9. 7 of the impugned order.*

9. *The CIT (Appeals) failed to appreciate that the survey statements relied upon for making the additions under consideration had no legal sanctity and ought to have appreciated that in the absence of supporting evidence in substantiating the answers given in the survey statements, the reliance based on such statements should be reckoned as bad in law in the light of the consistent judicial trend.*

10. *The CIT(Appeals) failed appreciate that there was no proper opportunity given before passing the impugned order and ought to have appreciated that any order passed in violation of the principles of natural justice should be reckoned as nullity in law.*

11. *The Appellant craves leave to file additional grounds/arguments at the time of hearing."*

3. The ground no. 1 is general in nature which needs no adjudication. Ground no.2 is not pressed by the assessee. Therefore, the same is dismissed as not pressed.

4. Ground no. 3, 4 & 5 of assessee's appeal are regarding the estimated addition of Rs. 27,18,374/- representing the manufacturing loss to the extent of 1060.738 grams for the conversion of old gold into new gold. Facts in brief for this issue are that the assessee is an individual engaged in the retail trade in jewellery. A survey action u/s. 133A of the Act

was conducted at the business premises on 26.11.2014. Thereafter, assessee filed return of income for assessment year 2015-16 on 15.08.2015, declaring total income of Rs. 44,84,420/-. The case of the assessee was scrutinized by issuing valid notice u/s. 143(2) and 142(1) of the Act. One of the issue examined by the AO was regarding conversion of old gold. The Id. AO observed that the assessee has converted old gold into new gold, but no wastage or manufacturing loss has been claimed for such conversion. The Id. AO also observed that the assessee used to charge 15% for wastage and takka to its customers. However, for converting old gold into new gold assessee has not shown any manufacturing loss. The Id. AO, accordingly calculated that if 15% manufacturing loss rate is applied on the old gold of weighing 7071.590 grams, quantity of 1060.738 grams which will account for the excess stock found during the course of survey, and accordingly made additions of Rs. 27,18,374/-. The assessee failed to get any relief from the Id. CIT(A).

5. Ld. Counsel for the assessee, during the course of hearing stated that when said conversion is carried out through job work basis, the goldsmith purifies the old gold

jewellery and add copper for manufacturing new gold jewellery and therefore, the weight of old jewellery is equal to the weight of new jewellery and there is no weight loss in manufacturing the new gold jewellery. He, however failed to controvert this fact that while conversion there has to be some wastage or manufacturing loss which is inevitable.

6. On the other hand, Id. DR vehemently argued the details filed by the Id. CIT(A).

7. We have heard the rival contentions and perused the records placed before us. The estimation of addition of Rs. 27,18,374/- representing the manufacturing loss to the extent of Rs. 1060.738 grams in the conversion of old gold jewellery into new gold jewellery by the Assessing Officer and confirmed by Id. CIT(A) is in dispute before us. The claim of the assessee is that there is no wastage in the conversion of old gold jewellery to new gold jewellery. It is also not in dispute that assessee charges 15% towards making charges, wastage and takka from its customers. It is also claimed that such conversion is carried out through other goldsmith on job work basis who adds copper during the course of converting old

jewellery into new jewellery. It is an admitted fact that when the old jewellery is converted into new jewellery there are certain inherent impurities in the old jewellery which are cleaned or washed out during the course of conversion. Though, the facts are not clear to the extent that whether old jewellery is first converted into pure gold and then new jewellery is made or that only the old jewellery is cleaned and polish into new jewellery. We however, looking to the given facts and circumstances of the case and the nature of business are inclined to uphold that atleast that there is a manufacturing loss of 7.5% on such conversion. We therefore, direct the Assessing Officer to sustain the addition applying the rate of 7.5% as against 15% applied for making the impugned addition. We therefore, set aside the findings of the Id. CIT(A) and the issue raised by the assessee in ground no. 3, 4 & 5 is partly allowed.

8. Ground no. 6, 7, 8, 9 & 10 are regarding the issue of addition of Rs. 33,90,758/- made by the Assessing Officer for the difference in stock based on the survey report. Facts in brief are that during the course of survey u/s. 133A of the Act, stock verification was carried out. Excess stock of 13262

grams of gold jewellery was found and the same was accepted by the assessee. However, in the return of income assessee disclosed the excess stock of 12810.920 grams of gold jewellery only. Further, the assessee applied the per gram rate of gold jewellery @ 2262/- and offered Rs. 2,93,62,629/- for taxation. So far as old gold jewellery was concerned, there was a shortage of 74.580 gms.

9. Ld. AO during the course of assessment proceedings examined the details filed by the assessee, but did not find any error in the quantitative details. However, for the purpose of valuing the excess gold jewellery, he after considering the rate of 24 carat gold at 2661.50 grams and considering the gold rate of 22 carat as well as making charges adopted the per gram rate of Rs. 2469.717 as on 26.11.2014 i.e., the date of survey and calculated the total value of excess gold jewellery at Rs. 3,27,53,387/- and the difference between the amount offered by the assessee and the amount calculated by the Assessing Officer i.e, Rs. 33,90,758/- was added to the income of the assessee for the shortfall in the valuation of excess gold jewellery found during the course of survey.

10. When the assessee carried out the matter before the Id. CIT(A) reiterating the details and submission filed before the Assessing Officer but failed to get any relief.

11. Now, the assessee is in appeal before this Tribunal.

12. Ld. Counsel for the assessee stated that the statement given during the course of survey u/s. 133A of the Act does not carry any evidentiary value and addition in the hands of the assessee can be made only on the basis of incriminating material found during the course of survey. In the case of assessee, excess jewellery was found and the same has been offered to tax by the assessee. However, Id. AO had adopted different rate without considering the factual aspect that gold jewellery does not constitute only gold but also has precious and semi-precious stones and other metals. Therefore, the valuation adopted by the assessee should have been accepted and the impugned addition may be deleted.

13. On the other hand Id. DR vehemently supported the order of both the lower authorities.

14. We have heard the rival contentions and perused records placed before us. Addition of Rs. 33,90,758/- towards valuation of excess stock of gold jewellery found during the course of survey is in dispute before us. We observe that 13262 grams was found in excess at the time of survey and in the return assessee only offered 12810.920 grams of gold jewellery for tax and the remaining 451.08 grams was not offered on the ground that after reconciliation of the statement no such difference was found. Details of amount offered to tax by the assessee and the calculation thereon has been placed before both the lower authorities and the same is reflected below for the sake of convenience:

*"Statement recorded in survey operation is not a conclusive piece of evidence. The written submission dt: 27.11.14 is only a working on which I agreed to pay taxes.*

*The Excess Gold Jewellery was arrived based on the books of accounts on the date of survey and the excess stock was arrived at 13262 gms of gold jewellery. At the end of the accounting year the books of accounts were verified and reconciled. The errors, mistakes and omissions were corrected for the purpose of finalization of accounts. The purchases made on the date of survey i.e. before commencement of survey was included in the books of accounts. The stock statement from 01.04.2014 to 26.11.2014 is submitted for your perusal. The excess stock of gold Jewellery is as below:*

**Gold Jewellery**

SI.No	Details	Grams	Remarks
1	Gold Jewellery on the date of survey	<b>51808.547</b>	
2	Less: Gold Jewellery as account	<b>38991.497</b>	

3	Excess Gold Jewellery	<b>12817.050</b>	
4	Admitted in the return of Income	<b>12810.920</b>	
5	Not admitted in the return of income	6.130	
6	Agreed for the addition of income @ Rs2622		<b>13866</b>
7	Add: Making charges @ gram		<b>184</b>
	<b>Total amount agreed for addition</b>		<b>14050</b>

*There is no difference in admitting the excess quantity of gold jewellery based on the books of accounts and the return of income except the difference of 6.130 gms of gold jewellery. The difference in terms of value of Rs.14050 which may be added to my returned income. In view of the above, there is no need for the addition of 451.08 gms value of the gold jewellery to the returned income.*

#### **b.Old Gold Jewellery**

Sr	Details	Gram	Remarks
1	Old Gold Jewellery found on surge	<b>399.5</b>	
2	Old Gold Jewellery as per accounts	<b>474.0</b>	
3	Shortage of old Gold jewellery	<b>74.580</b>	

*If the value of the shortage of Old Gold Jewellery 74.580 gms is treated as income and the said value shall be given credit/offset against the value of the excess stock admitted as income in the return of income."*

15. Based on the above details, the assessee offered the amount of Rs. 2,93,62,629/- for taxation. Whereas, Id. AO computed the value of Rs. 3,23,55,528/- in the following manner:

Gold in the 24K is the 100% pure gold. And 24K gold is used to make the 22K gold. Some alloys and impurities are added to the 24K gold and thereby, 22K gold is manufactured. The content of gold in 24K Gold is 100% and that in 22K Gold Jewellery is 91.667%.

Assessee had not accounted 451.08 grams of gold as mentioned above. Therefore, 451.08 grams of gold is also considered for the purpose of discovering the true value of gold. The quantity of 24K Gold necessary to make 13262grams of 22K Gold jewellery is 12156.877 grams. And the value of 12156.877 grams of 24K Gold for making 13262 grams of 22K Gold jewellery is Rs.3,23,55,528

**Based on the above, the value of 22K gold can be arrived as,**

Value of 24K gold per gram on the date of survey (Submitted by the assessee)	<b>Rs. 2661.50</b>
Value of 12156.877 g of 24K gold on 26-11-2014 necessary to make 13262 grams of 22K gold	<b>Rs. 3,23,55,528</b>
Making charges for 13262 g of gold (Rs. 30 per gram as claimed by the assessee)	<b>Rs. 3,97,860</b>
Value of 22K gold per gram as on 26.11.2014	<b>Rs. 2469.717</b>

16. Further, during the course of hearing before the first appellant authority, assessee submitted that the Id. AO erred in considering the total weight of the excess gold jewellery as gold, but did not consider the other impurities and precious and semi-precious stones and other metals of such jewellery. The reply filed by the assessee before the Id. CIT(A) reads as follows:

*"The Gold Jewellery is valued on the principles on the principles and . method adopted for the purpose of Wealth Tax Act. This is the normal and usual practice adopted for valuing the excess jewellery found at the time of survey/ search. To support the method of working, I provided the detail of V.G.Mehta's Ready Reckoner page no: 284 for valuation of Gold ornaments; The Gold Bullion value as on 26.11.2014 was taken as a*

*base for valuing the Gold Jewellery and copy of the business line dated 26.11.2014 was submitted for the Gold Bullion value.*

*On the date of survey, Gold Jewellery with stones and without stone were found and the excess stock includes both Gold Jewellery of with stones and without stone. Based on the Gold bullion rate, a deduction for impurities, soldering materials at the rate of 14% is made in the Gold bullion rate for the purpose of the valuation of the content of the Gold in excess stock of Gold Jewellery. By adopting this method the value of Gold Jewellery is arrived and for manufacturing the said jewellery, the manufacturing cost of Rs.30/g is added. The total value is admitted for the excess gold jewellery found.*

*While valuing the Gold jewellery no distinction is made i.e. Gold jewellery stones and gold jewellery without stones. Only 15% deduction is made for impurities, soldering materials i.e. takka from the bullion rates, As alleged in the show cause notice, the entire stock of excess gold jewellery is not having purity Of 91.667%. hence the value worked out based on 22K is unreasonable an- and against the normal practice followed in this line of business. Further, in the recent article of "The Hindu" dated 11.12.2017 will clearly show that the content of the Gold in Gold Jewellery 91.667. Copy of the "The Hindu" dt: 11.12.17 enclosed.*

*The excess Gold Jewellery found has not been valued as old gold jewellery since New Gold Jewellery was found at the time of survey. Hence, the said Gold Jewellery has been taken/recorded in New Gold Jewellery. The method of valuation adopted by me is highly reasonable and scientific as compared to any other method of valuation for the nature of the excess stock of jewellery found on the date of survey. The method of valuation adopted will not result in artificial reduction of the value of the Gold Jewellery as alleged in the show cause notice.*

*In view of the above, the excess Gold jewellery consists of the Gold Jewellery with stones and Gold Jewellery without stones and the value of gold per gram is Rs.2469. 717 cannot be adopted for addition purpose. The rate adopted by me is fair and reasonable for arriving the value of the excess stock of gold jewellery found on the date of survey. There is no need for any addition."*

17. Considering all facts, details filed by the assessee before the Assessing Officer and given before the Id. CIT(A) and the calculations made by the Id. AO, we find that undisputedly excess jewellery was found which the assessee has admitted and as against 13262 grams, assessee has admitted 12810.920 grams of excess jewellery in the return of income. However, for the purpose of valuation of said jewellery and the reconciliation of the stock in the hand complete details have been filed by the assessee based on the books of accounts and other bills and documents for the year under consideration and complete reconciliation statement has been filed about the stock in hand as on the date of survey as well as on the year end. Ld. AO has not found any discrepancy in the books of accounts nor has he rejected the book results. The addition made by the Assessing Officer is purely based on the statement given by the assessee during the course of survey but the same does not have any evidentiary value as consistently held by Hon'ble courts. The alleged addition is only on account of the rates applied by the Assessing Officer which is higher to the rate adopted by the assessee. From perusal of the calculation of Assessing Officer, we notice that he has totally ignored the cost of the precious and semi-

precious stones and other metals which are necessary to make gold jewellery. Under this given facts and circumstances of the case, the details filed by the assessee based on the records, books of accounts maintained cannot be ignored and therefore, alleged addition made by the Assessing Officer deserves to be deleted. We therefore, set aside the findings of the Id. CIT(A) and delete the addition made by the Assessing Officer. Thus, ground no. 6, 7, 8, 9 & 10 of assessee's appeal is allowed.

18. Other grounds being general and consequential in nature needs no adjudication.

19. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the court on 25<sup>th</sup> April, 2023 at Chennai.

Sd/-

(मनोमोहन दास)

**(MANOMOHAN DAS)**

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(मनीष बोराड)

**(MANISH BORAD)**

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 25<sup>th</sup> April, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |