

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 151/MUM/2023
(Assessment Year: 2015-16)**

Leena K Jain

3D-191, Kalpatru Aura, LBS Marg,
Opp. R City Mall,
Ghatkopar (West) – 400086
[PAN: AGOPJ2449N]

..... **Appellant**

Deputy Commissioner of Income-tax

Central Circle 4(3), Mumbai,
Room No. 1921, 19th Floor,
Air India Building, Nariman Point,
Mumbai - 400021

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Surji Chheda
For the Respondent/Department : Shri Sridhar Govind Menon

Date : 16.05.2023
Conclusion of hearing : 25.05.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 23/11/2022, passed by the Ld. Commissioner of Income Tax (Appeals) 52, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2015-16, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 13/03/2018, passed under Section 143(3) read with Section 153C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised the following grounds of appeal:

- "1) *The learned CIT(A) has erred in law and in facts in confirming to add Rs.5,06,,000/- as unexplained expenditure for jewellery bills found in the name of appellant.*
- 2) *The learned CIT(A) has erred in law and in facts to ignore the report of settlement commission, in which the above jewellery has been accepted of Omkar group & has been offered for tax.*
- 3) *The learned CIT(A) has erred in law and in facts to held that the time period for issue of notice u/s 143(2) had not lapsed in spite of the fact that notice u/s 153C has been issued on 28.09.2017 as against regular notice to be issued before 30.09.2016.*
- 4) *The learned CIT(A) has erred in law and in facts to held that bills found were criminating material to issue notice u/s 153C and in spite of the fact that no satisfaction notes has been issued in spite of being demanded in writing vide letter dated 23.10.2017.*
- 5) *The learned CIT(A) has been erred in law and in facts to confirm the addition in spite of the that he himself has deleted addition for cash in A.Y 2016-17 in similar circumstances.*
- 6) *The learned CIT(A) has erred in law and in facts in confirming to disallow claim of Rs.2,45,472/- for HRA."*

3. The relevant facts in brief are that a search and seizure action under Section 132 of the Act was carried out in the case of M/s Omkar Realtors and Developers Pvt. Ltd. (for short '**Omkar Realtors**') and others on 03/06/2015 at their business premises as well as the residential premises of directors and other key associates. During search two invoices, dated 29/11/2014 and

7/12/2014 were found which were in the name of the Appellant. These two invoices pertained to the purchase of jewellery of INR 2,02,000/- and INR 3,04,000/- in cash. Therefore, proceedings under Section 153C of the Act were initiated in the case of the Appellant by issuance of notice, dated 28/09/2017. In response, the Appellant filed Return of Income on 28/12/2017 declaring total income at INR 9,94,130/-. During the course of recording of statement under Section 132(4) of the Act, the aforesaid invoices were shown to the Appellant and she was asked to explain. In statement recorded under oath on 03/06/2015, the Appellant stated that jewellery purchased by way of the aforesaid invoices belonged to Smt. Aruna Verma (wife of Shri Babulal Verma, Managing Director of Omkar Group. However, the Assessing Officer was not convinced, and he made an addition of INR 5,06,000/- in the hands of the Appellant treating the same to be unexplained cash expenditure under Section 68 of the Act holding that the Appellant had failed to produce any cogent documentary evidence through which it could be proved that the above two invoices are not related to the Appellant. In addition the Assessing Officer also disallowed claim of House Rent Allowance (HRA) of INR 2,45,472/- made by the Appellant observing that the Appellant did not contest the same.

4. In appeal preferred by the CIT(A), the Appellant challenged the addition of INR 5,06,000/- made under Section 68 of the Act as well as disallowance of HRA amounting to INR 2,45,472/-. The CIT(A) rejected the contention of the Appellant that there was no incriminating material and confirmed the addition of INR 5,06,000/- under Section 68 of the Act observing that the invoices were in the name of the Appellant, and that the necessity of

drawing invoices in the name of the Appellant had not been explained. According to the CIT(A), it was not possible that a person would purchase jewellery in the name of another person and also give a copy of the invoice to such other person for safety. The contention of the Appellant that source of expenditure stands explained by Omkar Realtors cannot be the reason to delete the addition. It was quite possible that the jewellery were received as gift or had been liquidated. Therefore, we concluded that the addition has been made in the hand of right person.

5. Being aggrieved, the Appellant has preferred the present appeal against the order dated 23/11/2022, passed by the CIT(A) on the grounds reproduced in paragraph 2 above which are taken up hereinafter.
6. **Ground No.1, 2, 4 & 5** are directed against the addition of INR 5,06,000/- under Section 68 of the Act.
7. We have heard the rival submissions and perused the material on record. The Ld. Authorised Representative for the Appellant placed reliance on the written submissions filed before the CIT(A) and the Assessing Officer placed before us as part of the paper-book, while the Ld. Departmental Representative relied upon the order passed by the CIT(A) and the Assessing Officer.
8. On perusal of the order dated 29/03/2019, passed by the Income Tax Settlement Commission (for short 'Settlement Commission') in the case of Omkar Realtors under Section 245D(4) of the Act, we find that the averment made by the Appellant that the nature and source of cash used for purchase of jewellery in cash was explained by Omkar Realtors before the Settlement Commission to be

factually correct. The Settlement Commission had taken note of the submission made on behalf of Omkar Realtors that the invoices for the purchase of jewellery issued by Popley Jewellers and Anmol Jewellers in the name of employees of Omkar Realtors including the Appellant found during the course of the search pertained to jewellery purchased out of cash available with the Omkar Realtors. The aforesaid jewellery was used for sales promotion activity and constituted business expenses incurred for rewarding customers purchasing flats as well as for gifting others business associates. Before the Settlement Commission Omkar Realtors had accepted the ownership of the jewellery and disclosed the source of cash for purchasing such jewellery as cash generated from business through the unaccounted business income offered to tax before the Settlement Commission. In our view, Omkar Realtors accepted the ownership of cash as well as the jewellery purchased from such cash. Taking the disclosures made by Omkar Realtors undisclosed income of Omkar Realtors was determined by the Settlement Commission which has been brought to tax. It is not the case of Revenue that any cash or jewellery belonging to the Appellant was found during the course of search. The incriminating material was only the aforesaid two invoices. There is nothing on record to suggest that the jewellery was actually gifted to the Appellant or that the Appellant had sold the jewellery. To the contrary the fact that the Appellant was an employee of Omkar Realtors who had admitted to buying jewellery in cash in the name of the employees before the Settlement Commission supports the contention of the Appellant that the Appellant was not the owner of cash or the jewellery purchased therefrom. In view of the aforesaid, the addition of INR 5,06,000/- made by the Assessing Officer under

Section 68 of the Act and the confirmed by the CIT(A) cannot be sustained and is, therefore, deleted. Accordingly, Ground No. 1 and 2 raised by the Appellant are allowed. Ground No. 4 & 5 are disposed off as being infructuous.

9. **Ground No. 3, & 6** pertain to disallowance of HRA of INR 2,45,472/-. Before the Assessing Officer, the Appellant had stated that HRA was claimed inadvertently and had conceded to disallowance. However, before CIT(A), the Appellant contested the disallowance, inter alia, on the ground that the assessment proceedings for the Assessment Year 2015-16 stood abated; and that there was no incriminating material found during the course of search related to HRA. Therefore, in view of judgment of Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society and Others : 397 ITR 344 (SC), no addition could have been made on account of incorrect claim of HRA. However, the CIT(A) rejected the aforesaid contention holding that the assessment proceedings for the Assessment Year 2015-16 were not abated since the search was conducted on 03/06/2015.
10. In appeal before us, the Ld. Authorised Representative for the Appellant reiterated the contentions raised before the CIT(A), while the Ld. Departmental Representative supported the order passed by the CIT(A) and submitted that assessment proceedings were not abated.
11. Having considered the rival submissions and on perusal of the record, we find merit in the contention raised by the Appellant that assessment proceedings for the Assessment Year 2015-16 stood abated. The search was conducted on 03/06/2015. However, the

proceedings in case of the Appellant have been initiated under Section 153C of the Act. As per proviso to Section 153C of the Act, as applicable at the relevant time, the reference to the date of initiation of search under Section 132 of the Act is to be construed as the reference to the date of receiving the books of accounts or documents or seized assets by the concerned Assessing Officer initiating proceedings under Section 153C of the Act. CIT(A) had, therefore, incorrectly concluded that the assessment proceedings were not abated taking the date of search in the case of the Appellant ignoring the fact that for the Appellant, who has been proceeded under Section 153C of the Act, the date of receiving the books of accounts or documents or seized assets would be taken as the date of search. As per paragraph 5 of the Assessment Order the case of the Appellant was assigned to Central Circle on 22/09/2017 and satisfaction note was recorded on 28/09/2017. Therefore, even if 22/09/2017 is taken as the date of receiving books of accounts etc. and therefore, the relevant date for determining abatement of the assessment proceedings, the assessment proceedings for the Assessment Year 2015-16 shall stand abated as the original return was filed by the Appellant on 31/03/2016 and the period of 6 months from the end of the Financial Year 2015-16 for issuance of notice under Section 143(2) of the Act for initiating regular scrutiny proceedings expired on 30/09/2016. Therefore, the assessment proceedings for the Assessment Year 2015-16 stood abated. Thus, keeping in view the facts and circumstances of the present case we hold that no addition/disallowance could have been made in the hands of the Appellant in respect of HRA in the assessment framed under Section 153C read with Section 143(3) of the Act. Accordingly,

Ground No. 3 and 6 are allowed and disallowance of INR 2,45,472/- is deleted.

12. In result, the present appeal preferred by the Appellant is allowed.

Order pronounced on 25.05.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.05.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai