

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.569 to 571/Mum/2014
(A.Ys. 2008-09 to 2010-11)**

Smt. Rasilaben K. Gedia Flat No. 72, 7 th Floor, Shreeji Kutir, Ram Galli, Off S.V. Road, Kandivali (West), Mumbai – 400067	Vs.	The ACIT, Central Circle-13, Old CGO Building, M.K. Road, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ACIPG0511G		
Appellant	..	Respondent

Appellant by :	Ketan Vajani
Respondent by :	Rajesh Meshram

Date of Hearing	02.06.2023
Date of Pronouncement	19.06.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These 3 appeals filed by the assessee are directed against the common order of ld. CIT(A)-37, Mumbai, dated 21.11.2013. These appeals are based on identical facts to the same issue therefore, for the sake of convenience all these appeals are adjudicated together.

ITA No. 569/Mum/2014 (AY: 2008-09)

- “1. On the facts and in the circumstances of the case the CIT (A) has erred in confirming the addition of Rs.1,80,85,800/- on account of alleged unexplained cash loans.
2. On the facts and in the circumstances of the case, the CIT (A) has erred in confirming addition of Rs.5,67,429/- on account of Interest on alleged unexplained cash loans without appreciating various factual aspects of the matter.

ADDITIONAL GROUNDS

3. *On the facts and in the circumstances of the case, the assessing officer erred in making and the CIT (A) erred in confirming addition to the extent of Rs.2,19,900/- on account of cash deposited in bank.”*

2. Fact in brief is that search and seizure action u/s 132 of the Act was carried out in the case of Gedia Group on 25.08.2009. Consequent to the search action a notice u/s 153A of the Act was issued upon the assessee on 24.02.2010. The assessee has shown income from salary, house property and income from other sources. The assessment u/s 143(3) r.w.s 153A of the Act was completed on 30.11.2011 and total income was assessed at Rs.213,42,320/- after making various addition and disallowances. The further fact of the case are discussed while adjudicating the ground of appeal filed by the assessee.

Ground No. 1: Addition of Rs.2,19,900/- on account of cash deposited in Bank:

3. During the course of assessment the AO stated that at the time of search action the assessee was found to be the owner of the undisclosed bank account no. 3002 maintained with New India Cooperative Bank Ltd. and account no. 25393 maintained with Bank of Baroda. The assessing officer further stated that credit amount of Rs.2,57,046/- and Rs.2,31,034/- was found in the New India Cooperative Bank Ltd. and Bank of Baroda respectively. The AO has treated the total amount deposited of Rs.4,88,080/- as unexplained money stating that assessee has failed to offer any explanation about the nature and source of this amount credited in the bank account.

4. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has restricted the addition to the amount of Rs.2,01,034/- in respect of Bank of Baroda and Rs.22,006/- in respect of bank account maintained with New India Cooperative Bank Ltd. which was actually credited in the aforesaid undisclosed bank account on the basis of material available on record.

5. During the course of appellate proceedings before us the assessee has failed to substantiate the source of amount deposited in the aforesaid two undisclosed bank, therefore, we don't find any infirmity in the decision of Id. CIT(A). Accordingly this ground of appeal of the assessee stand dismissed.

Ground No. 2 to 4: Addition of Rs.180,85,800/- on account of unexplained cash loan:

6. During the course of assessment the A.O stated that certain documents and loose papers were seized from flat no. 72 at Shriji Kutir Kandivali West and these documents were pertained to the late husband of the assessee Shri Khimjibhai Gedia as stated by her son vide reply dated 09.11.2011. The contents of these seized document as reproduced in the assessment order are as follows:

<i>Page No. of annexure</i>	<i>Cash Loan (Amount in Rs.)</i>	<i>Interest (Amount in Rs.)</i>
2 of A-1	7,55,000/-	1,82,100/-
183 of A-1	43,13,000/-	3,85,329/-
21 of A-1	64,30,000/-	--
15 of A-2	65,87,800/-	--
Total	1,80,85,800/-	5,67,429/-

7. The AO has stated that as per page no. 183 annexure A-1 late Shri Khimjibhai has prepared a chart of cash loan given during the A.Y. 2004-05. The total cash loan was to the amount of Rs.7 lac and assessee has shown interest income of Rs.85,167/- on the cash loan of R.7 lac for FY. 2004-05.

8. The AO also stated that at page no. 21 of annexure A-1 there was description of cash loan given at various dates along with interest calculated on the cash loan. As per this paper the cash loan was given of Rs.64,30,000/-. The assessee's son Shri Chandresh Gedia explained that these were rough working made by his father for outstanding at various sites pertaining to the amount recoverable for work done. The AO has not accepted these explanations and treated the cash loan as

unexplained money in the hands of the assessee being the legal heir of Shri Khimjibhai Gedia.

9. The AO further stated that as per page no. 2 of annexure A-1 late Shri Khimjibhai Gedia has shown an amount of Rs.7,55,000/- as cash loan and an amount of Rs.1,82,100/- as interest. In his statement u/s 132 sub-section (4) son of the assessee Shri C.K. Gedia admitted that this amount was his father's cash transaction which include cash loan not reflected in the regular books of account. Shri C.K. Gedia also stated that this amount was recoverable from various parties for which his father had carried out the labour work. The AO stated that assessee has not given clear and relevant explanation of the aforesaid amount found in the seized paper therefore, treated this amount of cash loan as unexplained.

10. Regarding page no. 15 of annexure A-2 the AO stated that it was written that late Shri Khimjibhai has given cash loan total of Rs.65,87,000/-. Son of the assessee Shri C.K. Gedia stated that writing on the paper was just scribbling. The AO has not accepted the explanation of the assessee and treated the amount as unexplained money in the hands of the assessee being legal heir of Shri Khimjibhai Gedia.

11. The AO further stated that legal heir of the assessee were asked to submit page wise explanation in respect of the transaction mentioned on the seized paper as referred above. However, the assessee failed to make any compliance, therefore, the AO has treated the total amount of Rs.1,80,85,800/- along with interest of Rs.5,67,429/- as unexplained and added to the total income of the assessee u/s 69 of the Act.

12. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has rejected the appeal of the assessee.

13. During the course of appellate proceedings before us the Id. Counsel filed paper book comprising copies of document seized and submitted that the transaction mentioned in the paper were scribbling and there was also duplication of transaction mentioned in the papers. The Id. Counsel also submitted that part of the amount mentioned was already taxed in the hands of late Shri Khimjibhai in the A.Y. 2007-08 and A.Y. 2004-05 as shown in the reconciliation filed.

On the other hand, the Id. D.R supported the order of lower authorities.

14. Heard both the sides and perused the material on record. The assessing officer has made addition of Rs.1,80,85,800/- as undisclosed cash loan and Rs.5,67,429/- as interest on the cash loan on the basis of document seized during the course of search action as referred above in this order. The assessee has filed reconciliation and stated that the amount referred on the different pages of the seized document related to the same items which were recorded on different pages. The Id. Counsel submitted that items mentioned in the seized paper A-1/183, A-2/15 and A-1/21 were in duplication of the same transactions. The reconciliation filed which is reproduced as under:

Assessment Year : 2008-09 ITA No. : 569/Mum-2014							
Primary Page No.	Addition Amt	Other Page No.	Figures on Other Page	Remarks	Other Page No.	Figures on Other Page	Remarks
A-1/183 (PB Pg No. 130)			A/2-15 (PB Pg. No. 158)			A/1-21 (PB Pg. No. 157)	
(a)	25,00,000	(a)	25,00,000		(a)	25,00,000	
			20,84,300			20,84,300	
			8,86,500			8,86,500	
			-11,57,200			-11,57,200	
(b)	18,13,000	(b)	18,13,600	Nominal Difference of Rs. 600 to be ignored	(b)	18,13,600	Nominal Difference of Rs. 600 to be ignored
Total (a)+(b)	43,13,000	(c)	2,67,000	Taxed in Khimjibhai for AY 2007-08 on the basis of page No. A-1/183 (Refer page No. 185)	(c)	2,67,000	Taxed in Khimjibhai for AY 2007-08 on the basis of page No. A-1/183 (Refer page No. 185)
		(d)	7,00,000	Taxed in Khimjibhai for AY 2004-05 on the basis of page No. A-1/183 (Refer page No. 166)	(d)	7,00,000	Taxed in Khimjibhai for AY 2004-05 on the basis of page No. A-1/183 (Refer page No. 166)
		(e)	11,50,000	Part of Rs. 29,50,000 taxed in Khimjibhai for AY 2007-08 on the basis of page No. A-1/114 (Refer page No. 185)	(e)	11,50,000	Part of Rs. 29,50,000 taxed in Khimjibhai for AY 2007-08 on the basis of page No. A-1/114 (Refer page No. 185)
		Total (a) to (e)	64,30,600		Total (a) to (e)	64,30,600	
		Totaling Error	-10,00,000	Totaling Error	Small Diff to be ignored	600	
		Reduced in (b) above	11,57,200		Addition Amt.	64,30,000	
		Addition Amt	65,87,800				
Addition which can be confirmed	43,13,000	Reasons to ignore the addition for this page (A-2/15)			Reasons to ignore the addition for this page (A-1/21)		
Less : Relief for Declaration made in 153A Return	15,00,000	(1) All these items are already taxed in the hands of Khimjibhai as explained in remark column			(1) All these items are already taxed in the hands of Khimjibhai as explained in remark column		
Net Addition which can be made	28,13,000	(2) The page No. A/2-15 is not containing any date or any interest column which is there on Page No. A-1/183. As such, A-2/15 cannot be a valid evidence.			(2) The page No. A/1-21 is not containing any date or any interest column which is there on Page No. A-1/183. As such, A-1/21 cannot be a valid evidence.		

By referring the aforesaid reconciliation along with seized document placed at page no. 130, 158 and 157 of the paper book the ld. Counsel explained that similar transactions in duplication are appearing in the seized paper A-1/183, A/2-15 and A/-21 as placed at page no. 130, 158 and 157 of the paper book filed. The amount of Rs.2,67,000/- Rs.7,00,000/- and Rs.1,50,000/- were already assessed in the hands of Shri Late Khimjibhai as explained in the reconciliation statement reproduced at page 6 of this order, in support of his contention also filed copies of assessment order in the case of the late Shri Khimjibhai for A.Y. 2004-05 to A.Y. 2007-08 in the paper book. The ld. Counsel has also explained in the reconciliation items in duplication after referring these papers placed in the paper book. However, the ld. Counsel could not explain the amount of Rs.43,13,000/- referred in the seized papers. However, the ld. Counsel has further claimed relief for declaration made in the return of income filed u/s 153A of the Act to the amount of Rs.15 lac out of the total unexplained amount of Rs.43,13,000/-. The ld. Counsel failed to substantiate how out of Rs.43,13,000/- an amount of Rs. 15 lac has already been declared in the return of income filed u/s 153A of the Act. Therefore, after considering the facts and material we direct the AO to restrict the addition to the extent of Rs.43,13,000/- and interest amount of Rs.5,67,429/-. Accordingly, this ground of appeal is partly allowed.

ITA No. 570/Mum/2014 (AY: 2009-10)

Ground No. 1: Addition of Rs.10,54,969/- on account of undisclosed fixed deposit:

15. During the course of assessment the assessing officer stated that as per page 156 of Annexure A-1 of seized document the assessee had made various deposit on different dates totalling to Rs.10,54,969/-. The AO further stated that on the page no. 156 it is written as 'RK/CK' and

the assessee has not explained the amount of fixed deposit mentioned on the aforesaid seized paper, therefore, the same was treated as unexplained investment.

16. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

17. During the course of appellate proceedings before us after referring the various pages of the paper book the ld. Counsel submitted that the similar addition was also confirmed on protective basis in the hands of the son of the assessee Shri C.K. Gedia. The ld. Counsel further submitted that the ld. CIT(A) has sustained the addition in the hands of the assessee on assumption basis on the basis of first name of the assessee mentioned on the seized paper by treating the assessee as a holder of the FDR.

On the other hand, the ld. D.R supported the order of the lower authorities.

18. Heard both the sides and perused the material on record. The AO had made the addition of Rs.10,54,969/- on the basis of seized document A-1/156 on which detail of various FD made on different dates was reflected. In the seized paper name of the FDR holder was recorded in symbol 'RK/CK', since no explanation was provided during the course of assessment therefore, AO treated the assessee Mrs. Rasilaben Gedia as first name holder of the FD on the basis of seized document. During the course of appellate proceedings before us the ld. Counsel vehemently contended that once the said addition has been confirmed in the hands of the Shri C.K. Gedia the son of the assessee then the same should be deleted in the case of the assessee to avoid double taxation of the same transaction. After perusal of the material on record and finding of the ld. CIT(A) we consider that this issue is required to be examined on the basis of relevant material and

submission made by the assessee. Accordingly, this issue is restored to the file of the AO for deciding afresh after considering the relevant material and submission of the assessee.

Ground No. 2 & 3: Confirming the addition of Rs.7,82,496/- on account of interest of unexplained cash loan:

19. During the course of assessment the AO referred unaccounted interest income as per page no. 183 of Annexure A-1 showing amount of Rs.1,62,476/- and page no. 56 of Annexure A-1 showing amount of Rs.6,20,000/- totalling to Rs.7,82,476/-. The A.O observed that late Shri Khimjibhai had shown an amount of Rs.6,20,000/- as interest receivable from various parties and also interest of Rs.1,62,476/- on the cash loan given to various parties. The son of the assessee Shri C.K. Gedia has not agreed that these were interest amount to be received by his father and stated that same was estimated working quotation for work bill. The AO has not agreed with the submission of the son of the assessee and treated the amount of Rs.7,82,476/- as interest received on cash loan given by late Shri Khimjibhai Gedia and added the same in the hands of the assessee being legal heir of Late Shri Khimjibhai Gedia.

20. The assessee has filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the ground of appeal of the assessee.

21. During the course of assessment proceedings before us in respect of amount of Rs.6,20,000/- the ld. Counsel submitted that this was the old transaction and it was fully explained in the A.Y. 2008-09.

On the other hand, the ld. D.R supported the order of lower authorities.

22. Heard both the sides and perused the material on record. After perusal of the material on record it is noticed that the addition of

Rs.6,20,000/- as interest received was made on the basis of items mentioned at page no. 56 of Annexure A-1 of the seized documents. The ld. Counsel submitted that the claim of the assessee that it was the old transaction pertaining to the A.Y. 2008-09 was not contrary disproved by the ld. CIT(A). We find that this claim of the assessee is required to be examined by the A.O on the basis of relevant material after affording opportunity to the assessee. Therefore, this issue to the extent of Rs.6,20,000/- is restored to the file of the AO for deciding a fresh as directed above. Accordingly addition towards interest income of Rs.1,62,476/- is sustained. Therefore, this grounds of appeal is partly allowed.

Ground No. 4: Confirming the addition of Rs.8,645/-:

23. This ground of appeal of the assessee is not pressed therefore the same stand dismissed.

ITA No. 571/Mum/2014 (AY: 2010-11)

Ground No. 1: Addition of Rs.10,52,472/- on account of unexplained investment in fixed deposit:

24. On the same reason as adjudicated as per ground of appeal No. 1 for AY. 2009-10 vide ITA No. 570/Mum/2014 as supra the issue of fixed deposit is restored to the file of the AO for deciding afresh after taking into consideration the submission of the assessee and material placed in the paper book. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

Ground No. 2: To Reduce the addition on account of unexplained jewellery to the extent of Rs.6,96,600/-:

25. In the course of search action on 25.08.2009 at the residence premises of Flat No. 72 Shreeji Kutir Kandivali (W), certain gold jewellery of Rs.4,89,700/- valued by the government approved valuer was found.

Further an amount of jewellery of Rs.25,03,250/- from the locker no. B/655 of New India Cooperative Bank was found during the course of search action. During the course of search action the assessee was asked to explain the source of the jewellery found, however, the assessee has failed to explain the same. The assessee was also asked to produce the relevant evidences of source of investment in the jewellery valued at Rs.27,92,950/- but the assessee has not filed any reply or explanation regarding jewellery found during the search action therefore, the jewellery found was treated as undisclosed jewellery u/s 69A of the Act, and the same was added to the total income of the assessee.

26. The assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee. The relevant part of the decision of Id. CIT(A) is reproduced as under:

“21.3. Unexplained jewellery

In the assessment order addition of Rs. 27,92,950/- has been made in respect of undisclosed jewellery found during the search. The facts relating to the same as recorded in the assessment order is as follows:

“Certain Gold jewellery valued by the Govt approved valuer at Rs 4,89,700/- was found at the residential premises of the assessee. Further, jewellery valued at Rs.23,03,250/- was found at locker B/655 of New India Co-op Bank Ltd. during search. In the statement recorded u/s. 132(4) of the appellant, no explanation was furnished to explain the source of the jewelry. There after even during the assessment proceedings, the assessee failed to furnish explanation with regard to the jewelry found during the search. As consequence the AO. made an addition of Rs.27,92,950/- in respect of the jewelry found during the search as unexplained jewelry.

In the appellate proceedings the appellant has made an application for admission of additional evidence comprising of VDIS certificate issued in the case of Khimjibhai Gedia(HUF). Copy of balance sheet as at 31/03/09 in respect of Khimjibhai Gedia(HUF) has also been submitted. In the earlier part of the order, I have already discussed and explained the reason for admitting the additional evidence in the appellate proceedings. It does appear that the AR of the appellant did not furnish all the information available on records during the assessment proceedings, as has been stated on oath in the affidavit filed by the appellant. The Ld. AO has submitted at remand report in respect of this addition. After objecting to the admission of additional evidence, on merits the AO in her remand report has considered that the balance sheet of the Late Shri Khimjibhai Gedia(HUF) is merged with the balance sheet of Rasilaben Gedia for A.Y 2010-11. She has held that the balance sheet of Khimjibhai Gedia(HUF)

reflected the jewelry at Rs.986.4 gm. She therefore, treated 986.4 gms out of the jewelry found during search 2004.2 (net) gms to be explained. She has therefore suggested that relief of Rs. 13,74,260/- may be granted based on the average rate per gm of Rs.1393.2 at the time of search.

In the rejoinder to the remand report the appellant has further sought relief based on the CBDT Instruction no 1916 dt. 11/05/94 and the judgment of Bombay High Court in the case of Farakchand M. Jain vs DCIT(1998) 61 TTJ Mum 223 seeking relief of 500 gms based on this circular. Thus, additional relief of Rs.6,96,600/- has been claimed.

In the hearing held on 11/11/13 this issue was discussed with the AR. The AR was asked to submit the copy of Wealth Tax Return filed, the balance sheet of Shri Khimjibhai Gedia (HUF) starting from AY 08-09 till the last return filed to prove that these gold ornaments were always shown as available to the assessee since the VDIS declaration made in 1997 referred to gold ornaments valued at Rs.3,01,664/- in the VDIS certificates. The copy of income tax returns, copy of computation statement and balance sheet are filed. Based on this it is seen that in the declaration 1464.390 gm were declared out of which 480 gms were sold in FY 1997-98, leaving a balance of 984.4 gms which has remained the same thereafter. The list of ornaments as declared under VDIS was also filed. It is also submitted by appellant that since the jewellery is claimed to be belonging to the HUF, now the same has been considered as part of the assets of the appellant alone since Shri Khimji Gedia expired just prior to the search. action. It is also noted that addition in respect of jewellery found was made in the case Chandresh K. Gedia case also The Ld. CIT(A)-37, Mum in his order dt. 27/11/12 allowed relief in respect of 100 gms based on the CBDT circular no 1916 in respect of addition made of Rs 4,89,700/- as undisclosed jewellery. stands to reason if at all there was any jewellery available with HUF, the same would be available to all the members of HUF. Shri. Chandresh Gedia and Shri Bhavesh Gedia are the sons of Rasilaben Gedia, the appellant in this case. The assessee wants it to be considered in Her case since jewelry has been assessed mainly in her case (jewelry found at locker and residence) and in case of Chandresh Gedia (jewelry found at residence).

However as regards the CBDT circular no.1916 relied upon by the appellant, I find that my predecessor has accepted this plea in the case of Chandresh Gedia as mentioned earlier. However, no claim for credit for jewelry belonging to HUF was made in his case. In the case before me claim has been made in respect of jewelry belonging to HUF. Since this claim is being allowed, there is no case for additional credit for jewelry as per CBDT Instruction. In fact the Instruction is in respect of guidance while making seizure and is with the objective of sentiment attached to family jewelry. It is not a substitute for explain that the same is accounted for. I therefore hold that the appellant is not entitled to further relief to the extent of 500 gms in respect of jewellery treated as unexplained in the assessment order. The jewelry as per returns filed of Khimjibahi HUF is slightly lower than that considered by AO. Accordingly, the relief allowed is only Rs 13,71,450/- Accordingly, the appellant is granted relief of Rs.13,71,450/- (984.39 X 1393.2 per gms)

As ground of appeal no 5 in respect of levying interest 4 in respect of levy of interest on tax payable should not be charged since assessee had made specific request to adjust cash seized towards the tax liability, no supporting evidence has been produced before me in this regard. This issue has been

discussed in Para 5,3 above in this order in respect of AY 2004-05 For the same reasons, this ground is dismissed.

In the result, appeal for AY 201-11 is partly allowed.”

27. Heard both the sides and perused the material on record. We find that Hon'ble High Courts in the case of CIT Kanpur Vs. Ghanshyam Das Johri (2014) 41 taxman.com 295 (Allahabad), CIT Vs. Ratanlal Vyparilal Jain Gujrat High Court (2010) 2 taxman.com 997 (Gujarat), Kailashchand Sharma Rajasthan High Court held on the proposition that possession of jewellery of the quantities specified in the instructions issued by the CBDT Circular No. 1916 should not be subject matter of addition on the ground that assessee was unable to explain. In view of the fact and findings as supra we are not inclined with the decision of Ld.CIT(A) therefore, we direct the AO to grant relief in accordance with the CBDT circular no. 1916 as per the entitlement of the assessee. Therefore, this ground of appeal of the assessee is partly allowed.

28. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 19.06.2023

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 19.06.2023

Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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