

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H': NEW DELHI  
BEFORE,  
SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1593/Del/2021  
(ASSESSMENT YEAR 2016-17)**

DCIT Central Circle-28 New Delhi	Vs.	M/s Ginni Gold Pvt. Ltd. Shop No.105, 2606, 2607, Solitaire Plaza, Gurudwara Road Karol Bagh Delhi-110 005 PAN-AACCG 9728Q
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No.1200/Del/2021  
(ASSESSMENT YEAR 2016-17)**

M/s Ginni Gold Pvt. Ltd. Shop No.403, 4 <sup>th</sup> Floor 2633-2634 Bank Street, Karol Bagh, Delhi-110 005 PAN-AACCG 9728Q	Vs.	Asst. CIT Central Circle-28 New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Mr. Nirbhay Mehta, Advocate
Respondent by	Ms. Swati Joshi, CIT-DR

Date of Hearing	23/06/2023
Date of Pronouncement	27/07/2023

## **ORDER**

### **PER M. BALAGANESH AM:**

This appeal in ITA No.1200/Del/2021 of the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-29, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.10105/2018-19, dated 19/08/2019 against the order passed by Ld. Asst. Commissioner of Income Tax, Central Circle-28, Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 06/12/2018 for the Assessment Year 2016-17 as well as the Revenue has also filed Cross Appeal in ITA No.1593/Del/2021 for AY 2016-17.

2. The following grounds raised by the assessee as well as Revenue.

#### **ITA No.1200/Del/2021**

*"1. That on the facts and circumstances of the case and in law, the order passed by CIT(A) is contrary to facts and bad in law.*

*2. That on the facts and circumstances of the case and in law, the CIT(A) was not justified in enhancing the income of the appellant by Rs. 46,50,432/- being 30 percent of Rs. 1,55,01,438/- by proposing addition for non- deposit of TDS u/s 40(a)(ia) by introducing a completely new source of income contrary to the settled proposition of law laid down by jurisdictional High Court in the case of Commissioner of Income tax v. Union Tyres 107 taxman 447.*

2.1 That on the facts and circumstances of the case and in law, the CIT(A) was not justified in invoking section 251(1)(a) of the Act and enhancing the income of the appellant for a completely new source of income.

3. That on the facts and circumstances of the case and in law, the CIT(A) was not justified in upholding the disallowance of Rs. 4,05,530/- for non-deposit of TDS u/s 40(a)(ia) of the Income tax Act 1961 being 30 percent of the job expenses of Rs. 13,51,762/-.

4. That the Appellant craves leave to add, alter, amend, modify any of the ground of appeal during the appeal proceedings.”

ITA NO.1593/DEL/2021

“1. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred and on facts in deleting the addition of Rs.1,51,77,919/- made on account of unexplained liability as under the head "current liability" ignoring the fact that assessee has failed to produce any concrete and also additional evidences in support of its contention.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred and on facts in deleting the entire addition of Rs.10,61,08,108/- made on account of increase in short term liability under the head "Current Liability ignoring the fact that assessee has failed to produce any concrete and additional evidences in support of its contention

3. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred and on facts in deleting the addition of Rs. 49,62,863/- made on account of increase in other current liability under the head "Current Liabilities' ignoring the fact that assessee has failed to produce any concrete and additional evidences in support of its contention.

4. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.

5. That the grounds of appeal are without prejudice to each other.

6. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of bearing of the appeal.”

2. Let us take up the Revenue appeal first in ITA No.1593/Del/2021.

3. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the addition of Rs.1,51,77,919/- on account of unsecured loan in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of manufacturing and trading of gold and diamond jewellery and had filed its return of income for AY 2016-17 on 17/10/2016 declaring loss of Rs.28,38,65,791/-. The Ld. AO on perusal of the audited balance sheet observed that amount payable had increased by Rs 1,51,77,919/- during the year under consideration and sought for details thereof. In the absence of supporting documents filed by the assessee, the Ld. AO proceeded to treat the increase in “amount payable” of Rs.1,51,77,919/- as unexplained and unverifiable creditors and added the same to the total income of the assessee without mentioning under what

provisions of the Act, the same is being added by him. Before the Ld. CIT(A), the assessee filed additional evidences under Rule 46A of the Income tax Rules, furnishing the complete details of the “amounts payable”. The additional evidences were filed by the assessee were duly admitted by the Ld. CIT(A) and forwarded to the Ld. AO calling for a remand report. The Ld. AO furnished the remand report on 01/02/2019. The assessee filed rejoinder to the said remand report. The Ld. CIT(A) observed from the details that the same comprises of amounts payable by the assessee to the following persons:-

(i) Ashok Goel	Rs.1,30,20,493/-
(ii) Arjun	Rs. 28,50,000/-
(iii) Praveen Aggarwal & Sons	Rs. 21,50,000/-
	Total Rs.1,80,20,493/-

4.1. The assessee furnished the confirmation of balance from all these parties together with the statement of account of all these parties as appearing in books of the assessee. The assessee also gave the details as to how the aforesaid amounts become payable to the aforesaid parties by the assessee by stating as under:-

S. No	Name of the Party	Closing Balance (in Rs.)	Remarks
1.	Ashok Goel	1,30,20,493/-	A close examination of the statement of account would reveal that the amount is payable to Sh. Ashok Goel on account of Income Tax and TDS deposited by him on behalf of the assessee company.
2.	Arjun	28,50,000/-	A close examination of the statement of account would reveal that this amount has been received as advance from Sh. Arjun against sale of immovable property bearing no. 402, Rajdeep, Karol Bagh. Later on the said property was sold to DPAG Builders Pvt. Ltd. who in turn directly made payment to Sh. Arjun.
3.	Praveen Aggarwal & Sons	21,50,000/-	A close examination of the statement of account would reveal that this amount has been received as advance from Praveen Aggarwal & Sons against sale of immovable property bearing no. 402, Rajdeep, Karol Bagh. Later on the said property was sold to AGDP Builders Pvt. Ltd. who in turn directly made payment to Praveen Aggarwal & Sons.
	TOTAL	1,80,20,493/-	

4.2. Accordingly, it was pointed out no unsecured loan per se was received by the assessee from the above parties and hence, the provisions of section 68 of the Act would not be applicable. The assessee vide letter dated 06/02/2020 and 12/02/2020 submitted that it had paid back Rs.1,30,20,493/- to Sh. Ashok Goel in subsequent year and in support of which, assessee enclosed a copy

of the ledger account together with the bank statement for AY 2017-18. As regards the amount of Rs.28,50,000/- and Rs.21,50,000/ received from Arjun and Praveen Aggarwal & Sons respectively, the assessee explained that these amounts were received from above persons as advance towards sale of property and the property was ultimately sold to AGDP Builders Pvt. Ltd. and DPAG Builders Pvt. Ltd respectively and the amounts earlier received as advance were refunded to Arjun and Praveen & Sons directly by the builders on behalf of the assessee. In support of this, assessee filed confirmation from AGDP Builders Pvt. Ltd. and DPAG Builders Pvt. Ltd. Hence, all the three parties cannot be treated as income even u/s 41(1) of the Act on the ground of cessation of liability. First of all, these liabilities did not cease to exist as on 31/03/2016 in the books of the assessee. Moreover, all these liabilities were actually settled in subsequent assessment years. All these facts were duly appreciated by the Ld. CIT(A) and relief has been granted, on which we do not find any infirmity. Accordingly, ground no.1 raised by the Revenue is dismissed.

5. The next issue to be decided in this appeal as to whether the Ld. CIT(A) was justified in deleting the addition of Rs.10,61,08,398/- made on account of increase in short term liability in the facts and circumstances of the instant case.

5.1. We have heard the parties and perused the material available on record. On perusal of the balance sheet of the assessee, the Ld. AO observed that during the year under consideration, there was an increase of short term borrowings of Rs.10,61,08,398/- for which details were sought from the assessee. Since, no documents were furnished by the assessee, the same was treated as income by the Ld. AO without mentioning under which provisions of the Act, the same was added. Before the Ld. CIT(A), the assessee furnished the additional evidences that the said borrowings amount represents secured loan borrowed from Karnataka Bank Ltd., Union Bank of India and Reliance Capital Ltd. It was pointed out that these were duly secured against the properties and current assets of the assessee company and were granted by the related parties and sister concern of the assessee company. The entire details of the same were produced by the assessee in the following manner:-

Sr. No.	Particulars	As at March 31 2016 (Amount in Rs.)	As at March 31, 2015 (Amount in Rs.)
1	<p>Secured Loan Repayable on Demand -From Banks Karnataka Bank Ltd (Cash Credit Account) Secured against hypothecation of Stock in</p> <p>Trade &amp; Book Debts Margin on stock, Book Debts (Upto 90 days) is 25% First charge on Current Assets of the Company on pari passu basis with Union Bank of India under consortium arrangement and equitable mortgage of properties belonging to Mr. Rajinder Kr. Ratawal &amp; Smt. Durga Ratawal, M/s Bhavya Gold Pvt. Ltd., &amp; M/s SKG Gold Put Ltd. alongwith personal guarantee of Mr. Jai Singh Goel, Mr. Pradeep Goel, Mr Ashok Goel, Smt. Ginni Deus. Mrs Reena Goel, Mrs Jyoti Goel, Mr. Rajinder Kr. Ratawal &amp; Smt. Durga Ratawal &amp; Corporate Guarantee of M/s Bhavya Gold Pvt. Ltd. &amp; M/s SKG Doors Pvt Ltd</p>	51,37,91,118.21	45,60,60,938.21
2	<p>Union Bank of India (Cash Credit Account) Secured Against hypothecation of Stock in Trade &amp; Book Debts:-</p> <p>Margin on Stock, Book Debts (upto 90 days) is 25% First charge on Current Assets of the Company on pari passu basis with Karnataka Bank Ltd under consortium arrangement and equitable mortgage of properties belonging to Mr. Rapnder Kr Ratawal &amp; Smt. Durga Ratawal M/s Bhavya Gold Pvt. Ltd &amp; M/s SKG Doors Pvt. Ltd alongwith personal guarantee of Mr Ja Singh Goel, Mr. pradeep Goel Mr. Ashok Goel, Smt. Ginni Devi, Mrs Reena Goel, Mrs. Jyoti Goel, Mr. Rajinder Kr. Ratawal &amp; Smt. Durga Ratawal &amp; Corporate</p>	13 50,39,64,757.	45,62,96,120.14

	guarantee of M/s Bhaya Gold Pvt. Ltd & M/s SKG Doors Pvt. Ltd.		
	From Other Parties	91,05,263.95	84,11,586.16
	Loan against Property Reliance Capital Ltd (Loan against property bearing Plot No. 8, Ground Floor, Block 16A,W.EA Karol Bagh New Delhi-110005 registered in name of Bhaya Gold Pvt Ltd. and co borrowed by Mr Ashok Goel, Mr Praveen Gupta, Mr. Pradeep Goel, Smt Ginni Dess, Mrs.Reena Goel Mrs. Sonia Gupta, Mrs. Jyoti Goel, M/s. Ginni Holdings, M/s Goel Exim India Pvt. Ltd, M/s Sunar Jewels Pvt Ltd, M/s Shape Flag Commodities Pvt Ltd., M/s AP Matacil Ltd., M/s Bhavya Gold Pvt. Ltd. and M/s Shree Raj Mahal Jewellers Pvt. Ltd. in joint capacities. (Vehicle Laon) (Loan is against hypothecation of vehicle)	9,05,973.04	8,18,069.35
	Total	1,02,77,67,112.33	92,15,86,713.86

5.2. The assessee in respect of the above submitted- (a) Bank statement of cash credit limit bearing No.1897000100442301 from Karnataka Bank Ltd. along with the reconciliation statement as on 31/03/2016 ; (b) Copy of the bank statement of cash credit limit bearing no. 308005010132062 from Union Bank of India as on 31/03/2016 ; and (c) Copy of details showing total short term borrowings as on 31/03/2016 along with repayment schedule and account statement of Reliance Capital Limited evidencing the amount payable in financial year 2016-17 and the payment made

justifying the current maturity of long term debt. The Ld. CIT(A) admitted the aforesaid additional evidences and forwarded the same to the Ld. AO calling for a remand report. The Ld. AO did not agree to the contentions of the assessee in the remand report dated 01/02/2019. The assessee filed rejoinder to the remand report. The Ld. CIT(A) observed that from the documents furnished by the assessee it is categorically clear that there were secured loans from banks and non-banking finance company. These loans are duly secured by the fixed assets and current assets of the assessee company and further backed by guarantees given by the sister concern of the assessee. Hence the bank statements and the repayment schedule for the loan duly serve as supporting evidences for the aforesaid loans availed by the assessee. Hence, there is absolutely no justification for adding the same as income of the assessee as the genuineness of the loans borrowed from the aforesaid parties cannot be doubted and the same are duly verifiable with evidences. There is absolutely no infirmity in the order of the Ld. CIT(A) by making the aforesaid observations and granting relief to the assessee. Accordingly, ground no.2 raised by the Revenue is dismissed.

6. The last issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the addition of Rs.49,62,863/- made on account of increase in other current liability under the head 'Current Liabilities' in the facts and circumstances of the instant case.

6.1. We have heard the rival submissions and perused the material available on record. The Ld. AO on perusal of the audited balance sheet of the assessee company observed that other current liability has been increased by a sum of Rs.49,62,863/- during the year for which details were sought for. Since, no details were filed by the assessee, same was treated as income by the Ld. AO without even mentioning under what provisions of the Act the same would become income of the assessee. Before the Ld. CIT(A), the assessee furnished the details of other current liabilities as under:-

Sr. No.		As at March 31, 2016 (Amount in Rs.)	As at March 31, 2015 (Amount in Rs.)
1	D.VAT Payable	48,34,173.00	
2	TDS Payable	15,48,475.00	15,80,826.00
3	Bank Overdraft Balance	1,61,041.50	
	Total	65,43,689.50	15,80,826.00

6.2. The assessee furnished the following additional evidences before the Ld. CIT(A):-

(a) Copy of the ledger accounts of VAT payable along with quarter wise purchases and sales summaries substantiating and cross verifying the VAT liability and the challans substantiating the payments made for the year.

(b) Copy of TDS summary showing TDS liability for the year booked by the assessee along with respective TDS ledger accounts under which tax has been deducted and respective challans evidencing payments made during the year.

(C) Copy of bank statements maintained with Tamil Nadu Mercantile Bank along with bank reconciliation statement as on 31/03/2016.

6.3. The Ld. CIT(A) admitted the aforesaid additional evidences and forwarded the same to Ld. AO calling for a remand report. The Ld. AO furnished the remand report on 01/02/2019 dismissing the contentions of the assessee. The assessee filed rejoinder to the remand report. The Ld. CIT(A) appreciated and admitted the aforesaid additional evidences and observed that these are regular trade statutory dues payable by the assessee in addition to bank overdraft payable to the bank. All the transactions are duly

supported by documentary evidences. Hence, we find no infirmity in the order of the Ld. CIT(A) granting relief to the assessee in this regard. Accordingly, the ground No.3 raised by the Revenue is dismissed.

7. Grounds No.4, 5 & 6 raised by the Revenue are general in nature and does not require any specific adjudication.

8. In the result, the appeal of the Revenue is dismissed.

9. Let us to come assessee's appeal in ITA No.1200/Del/2021.

10. Grounds No.1 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

11. Ground No.3 raised by the assessee was stated to be not pressed at the time of hearing by the Ld. AR. The same is reckoned as a statement made from the bar and accordingly ground No.3 is hereby dismissed as not pressed.

12. The only surviving ground to be decided in this appeal is as to whether the Ld. CIT(A) was justified in enhancing the income of the assessee by Rs.46,50,432/-, being 30% of Rs.1,55,01,438/- for non deduction of TDS u/s 40(a)(ia) of the Act in the facts and circumstances of the instant case.

12.1. We have heard the rival submissions and perused the material available on record. During the course of appellate proceedings, the Ld. CIT(A) observed that the assessee had not deducted TDS on certain payments and accordingly, the same would be liable for disallowance u/s 40(a)(ia) of the Act. Therefore, he issued an enhancement notice u/s 251(2) of the Act dated 05/08/2021 to the assessee company which reads as under:-

*"2. Ground No.5 of the appeal is with regard to addition of rs.49,62,863/- made in the assessment order by treating the increased in other current liabilities as unexplained and unverified.*

*3. Vide letter dated 14.10.2018 an application has been made for admission of additional evidence.. In the said application U has been submitted that out of the total increase and other liabilities one amount refers to the increase in TDS payable as on 31.03.2016 vis-a-vis the position as on 31.03.2015. The table submitted by the appellant in this regard is reproduced below:*

*Note: 5 Other Current Liabilities*

S. No.		As at March 31, 2016 (Amount in Rs.)	As at March 31, 2015 (Amount in Rs.)
1	D-VAT Pauable	48,34,173.00	
2	TDS Paucible	15,48,475.00	15.80.826.00
3	Bank Overdraft Balance	1,61,041.50	-
	Total	65,43,689.50	15.80,826.00

4. It has been submitted in the Written Submissions as well as application for additional evidence that no addition is required on this issue since the increase in other liabilities is on account of the increase in statutory liabilities. From the details submitted it is noted that the outstanding amount of TDS payable as on 31.03.2015 has been paid during F.Y. 2015-16. However, the TDS payable pertaining to F.Y. 2015-16 aggregating Rs. 15,48,475/- has not been deposited till the close of the financial year. The details of the same are as under:-

S. No. (1)	T.D.S. (2)	Amount (3)	Amount of Expenses corresponding to Column 3 (4)
1.	Rent	54,000/-	5,40,000/-
2.	Professional Charges	48,000/-	4,80,000/-
3.	Interest	14,31,270/-	1,43,12,700/-
4.	Contractor	15,205/-	15,20,500/-
	Total	Rs. 15,48,475/-	Rs.1, 68,53,200/-

*In view of the above you are given an opportunity to explain why your income should not be enhanced by making an addition u/s 40 (a)(ia) of Rs. 1,68,53,200/- for non-deposit of TDS within the prescribed period. As such, this notice of enhancement is being issued to you. You may file your written submissions electronically in e-proceedings facility through your in e-filing website [www.incometaxindiaefiling.gov.in) on or before 12.08.2021.”*

12.2. The assessee filed detailed submissions vide letter dated 11/08/2021 raising objections against the assumption of jurisdiction for making enhancement on the ground that issue of disallowance u/s 40(a)(ia) of the Act would be a new source of income which cannot be subject matter of addition by way of enhancement by the Ld. CIT(A). On without prejudice basis, the assessee also submitted that, in any case, even if there is violation of non deduction of tax at source, the disallowance cannot made at 100% of the transaction value and the same could have to be restricted to 30% in terms of amended

provisions of section 40(a)(ia) of the Act as applicable for the year under consideration. The Ld. CIT(A) observed that the assessee had not given any reply to the enhancement notice on merits of the addition and proceeded to disallow 30% of 1,55,01,438/- which worked out to Rs.46,50,438/- u/s 40(a)(ia) of the Act as enhancement. Aggrieved, the assessee is in appeal before us.

12.3. The Ld. AR before us vehemently argued that the enhancement made by the Ld. CIT(A) was on account of issue which is a completely new source of income considered by the Ld. CIT(A). He placed reliance on various decisions wherein it has been held that no enhancement could be made by the Ld. CIT(A) in respect of a new source of income.

12.4. Per contra, the Ld. DR vehemently argued that TDS payable, VAT payable, Bank overdraft balance were already subject matter of addition by the Ld. AO by impliedly applying the provisions of section 68 of the Act. Hence, the same cannot be considered as new source of income. Accordingly, the Ld. CIT(A) was duly justified in considering the issue for enhancement.

12.5. We find that the Ld. AO had contemplated in the assessment order to treat the other current liabilities comprising of VAT payable, TDS payable and Bank overdraft balance as explained cash credit u/s 68 of the Act on an implied basis. Though, no section has been mentioned by the Ld. AO, but basis of addition was doubting the genuineness of those liabilities reflected in the balance sheet. Now, the ld. CIT(A) is trying to make disallowance of corresponding expenses which are relatable to other current liabilities reflected in the balance sheet. Hence, in our considered opinion, it does not tantamount to new source of income as the issue of TDS payable was already subject matter of addition by the Ld. AO u/s 68 of the Act treating the liabilities as non-genuine. The Ld. CIT(A) in the instant case is only trying to disallow corresponding expenditure relatable to the said TDS payable. Hence, the Ld. CIT(A) while addressing the dispute of addition made on account of TDS payable had the details of corresponding expenses before him. At that point of time, the Ld. CIT(A) had understood and found that those expenditures were not subjected to deduction of tax at source thereby warranting disallowance u/s 40(a)(ia) of the Act. We find no infirmity in the

said action of the Ld. CIT(A). The case laws relied upon by the Ld. AR are factually distinguishable as in all those cases it was clear cut case of new source of income considered and added by way of enhancement by the Ld. CIT(A), whereas as observed above, in the instant case, the issue of enhancement was not a new source of income. Accordingly, the ground no.2 raised by the assessee is dismissed.

13. In the result, the appeal of the assessee is dismissed.

14. In the result, the appeal of the Revenue is dismissed and appeal of the assessee is dismissed.

Order pronounced in the open court on 27<sup>th</sup> July, 2023.

Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 27/07/2023

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

*ITA No.1593/Del/2021 &  
ITA No.1200/Del/2021*

**ASSISTANT REGISTRAR  
ITAT NEW DELHI**