

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 5089/MUM/2007  
(ASSESSMENT YEAR- 2005-06)**

Asstt. Commissioner of Income-tax, Central Circle-13, Mumbai.	Vs	Shri Amritlal Mali Choudhary Market, Main Bazar, Rani Station, District- Pali (Raj.)
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AOKPP 3143 H</b>		

**ITA Nos. 5090/MUM/2007  
(ASSESSMENT YEAR- 2005-06)**

Asstt. Commissioner of Income-tax, Central Circle-13, Mumbai.	Vs	Shri Jhalaram Dewasi (Alias Sanjay T. Jain) C/o Kirti Bags and Collection, General Stores, Bedal Road, Falina, District-Pali (Raj.)
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AEJPD 9742 D</b>		

(Virtual hearing)

<b>Assessee By</b>	None
<b>Revenue By</b>	Shri S.M. Joshi, JCIT-DR
<b>Date of hearing</b>	05/07/2023
<b>Date of Pronouncement</b>	03/10/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

These are two appeals filed by the Revenue against two different orders Learned Commissioner of Income Tax (Appeals), Central-VII, Mumbai [herein after “Ld.CIT(A)”] both dated 25.05.2007 for the assessment years 2005-06 respectively. These appeals are filed by the Revenue in the Mumbai Benches, Mumbai and the appeals were listed in ITA No. 5089 & 5090/Mum/2007. The said appeals have been transferred to Jodhpur Bench by an order of the Hon’ble President, ITAT Mumbai vide transfer order dated 24.02.2020 and since these appeals are transferred by an order of the Hon’ble President the same is listed before the Bench and considered for disposal.

2. Since, the facts of both the cases are identical, we have heard these cases together and passing the order together. The facts and grounds are taken from the folder of Shri Jhalaram Dewasi (Alias Sanjay T. Jain) ITA No. 5090/MUM/2007 and this case is taken as lead case.

3. The Revenue in ITA No.5090/Mum/2007 has raised the following grounds of appeal:-

*“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in:-*

*(1) On the facts and in the circumstances of the case and in law, the Ld. CIT(a) erred in deleting the addition made of Rs. 1,66,66,000/- being*

*value of gold weighing 26 Kgs. Seized from the assessee, made by the AO in the hands of the assessee on protective basis and also the addition made in the hands of Mr. Suresh V. Jain, Prop. Rajguru Bullion, the main party. Therefore, in order to keep in the issue alive, second appeal is recommended in this case.”*

*2. The appellant craves to leave to add, to amend and/or to alter any of the grounds of appeal, if need be.*

*3. The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A), Central-VII, Mumbai, may be set aside and that of the Assessing Officer restored.”*

4. Nobody appeared on behalf of the assessee in spite of giving the opportunity, therefore, the Bench decided to dispose off the appeal after considering the contention of the Ld. Departmental Representative and the material placed on record.

5. Brief facts of the case are that the assessee is an individual. During the year under consideration the assessee was engaged in business of running a general store and also an STD PCO Booth. The assessee also had a Taxi which was used for delivery of gold bullion, collection of sales proceeds of gold bullion and depositing the same in the bank account on behalf of one M/s. Rajguru Bullion (Prop. Shri Suresh Jain) which was engaged in the business of trading in Gold and Silver Bullion. Actions u/s. 132(1) / 133A were carried out by the Department at the residential and office premises of Shri Suresh Jain

on 9.12.2004. In the course of the search gold bullion valued at Rs. 1,66,66,000 belonging to M/s. Rajguru Bullion was seized by the Income tax Department from the possession of the assessee. In pursuance to the notice u/s. 153A (a), the assessee filed his return of income on 10.7.2006 declaring total income of Rs. 84,269. In making the assessment u/s. 153A(b), the AO made addition of Rs. 1,66,66,000/- on account of unexplained investment in gold bullion to the Income of the assessee. Conclusively, the AO made addition in the hands of the assessee by holding as under:-

*“The unaccounted investment in gold weighing 26 Kgs. Carried by the assessee before seizure has already been taxed in the hands of Shri S.V. Jain, proprietor of M/s Rajguru Bullion Pvt. Ltd. A **protective addition from the same is made in the case of assessee.** The value of the investment is Rs. 1,66,66,000/-. Penalty proceedings u/s 271(1)(c) is initiated.*

6. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“4. The only issue disputed in appeal is the addition of Rs. 1,66,66,000/- account of unexplained investments in the gold bullion made on protective basis. The AO has stated the unaccounted investment in gold weighing 20 kgs carried by the Assessee before seizure has already been taxed in the hands of Shri S. V. Jain, Prop of M/s Rajguru Bullion Pvt. Ltd (incorrect). A protective addition for the same is made in the case of the assessee.

5. I have vide my order no. no CIT(A)C-VII/DCCC-1341-113/06-07 dated 24.5.2007 in the case of Shri Suresh Jain (Prop. Rajguru Bullion) have held that

the gold bullion found in the possession of the Appellant is part of stock in trade of M/s Rajguru Bullion and is properly accounted for in the books of accounts of M/s Rajguru Bullion and hence fully explained in the hands of Shri Suresh Jain (Prop M/s. Rajguru Bullion).

6. In view of above the protective additions made in the hands of the Appellant is deleted. The AO is directed to delete the protective addition of Rs 1,66,06,000 made in the hands of the Appellant on account of unexplained investment in gold bullion.

7. The other grounds raised by the Appellant regarding validity of protective additions in the assessment made u/s 153A and regarding validity of assessment proceedings have become purely academic and are therefore dismissed.

8. In the result, the appeal is partly allowed.”

7. During the appeal proceedings, the Revenue has submitted the following written submission:-

“Kindly refer to your good self's office letter No CIT/DR)/ITAT/2023-24/ dated 04-07-2023 A telephonic message vide which your goodself has requested that Hon'ble ITAT. Jodhpur Bench in ITA No 5090/JPR/07 in the case of Sh. Jhalaram Dewasi Falna, Pali case was listed for hearing on 05-07-2023 and raised a query whether the appeal to be contested by the department or to be withdrawn in view of the judgment appellate authority In the case of Sh. Suresh B. Jain in whose case substantive addition was done and corresponding protective addition done in the case of assessee and in the case of appeal is to be taken up on merits then written submission may be filed.

In this regard it is submitted that the case of Sh. Suresh Jain, Prop. Rajguru Bullion, Mumbai, PAN AAUPJ32848 was completed by Central Charge, Mumbai by making substantive addition and appeal before Hon'ble ITAT, Mumbai filed by respective Central Charge, Mumbai.

The fact of the case is that a search and seizure action u/s 132 of the IT Act, 1961 was conducted on 09-12-2004 on Shri Suresh V. Jain Prop. M/s Raj Guru Bullion, Mumbai at the residential premises & business premises. The assessee Sh. Jhalaram Dewasi (Alias Sanjay T. Jain) PAN AEJPD9742D acted as a carrier for Mr. Suresh V. Jain carrying the gold of 26 kgs. The assessee was intercepted by the department at Mumbai Airport. When asked about the source of the gold bars, he said that the gold belonged to Shri Suresh V. Jain which was valued at Rs. 1,66,66,000/- The Dy. Commissioner of Income Tax, Central Circle -13, Mumbai vide his order u/s 143(3) r.w.s. 153A of the IT Act, 1961 dated 27-12-2006 has made the protective addition of Rs. 1,66,66,000/- in hand of assessee as unaccounted investment in gold weighing 26 kgs, carried by the assessee. The

substantive addition has been made in the hands of Sh. Suresh V. Jain Prop. Raj Guru Bullion, Mumbai.

The Ld. CIT(A) vide his order No CIT(A)C-VII/DCCC-13/IT-114/06-07 dated 25-05-2007 in the case of assessee Sh. Jhalaram Dewast in para No 5 has mentioned that vide order No CIT(A)C- VII/DCCC-13/IT-113/06-07 dated 24-05-2007 in the case of Sh. Suresh Jain have held that the gold bullion found in the possession of the assessee Sh. Jhalaram Dewast is part of stock in trade of M/s Rajguru Bullion, Mumbai and was properly accounted for in the books of account of M/s Rajguru Bullion, Mumbai and fully explained in the hands of Sh. Suresh V. Jain Prop. M/s Rajguru Bullion, Mumbai, hence the protective additions made in the hands of the assessee Sh. Jhalaram was deleted.

The Asstt. Commissioner of Income Tax, Central Circle-13, Mumbai has filed appeal before the Hon'ble Tribunal, Mumbai against order of Ld. CIT(A), Central Circle-VII, Mumbai. After that the case of the assessee transferred from Hon'ble ITAT, J. Bench, Mumbai to Hon'ble ITAT, Jodhpur Bench. A fresh appeal filed by the ITO, Sumerpur before Hon'ble ITAT, Jodhpur against the order of Ld. CIT(A), Central Circle-VII, Mumbai.

As per information gathered it is found that jurisdiction of Sh. Suresh Jain, Prop. Rajguru Bullion, Mumbai, PAN AAUPJ32848 is presently lying with ITO-22(3)(6), Mumbai. A letter has also been written to him. The ITO-22(3)(6), Mumbai in his email dated 18-11-2022 (Copy enclosed) has mentioned that the Hon'ble ITAT, Mumbai Bench has dismissed the appeal of the revenue vide its order No ITA NO 509/Mum/2007 dated 10-12-2019 for A.Y. 2005-06 in the case of assessee Sh. Suresh Jain. The department has filed appeal before Hon'ble Bombay High Court against order of Hon'ble ITAT. The ITO-22(3)(6), Mumbai has further stated that the Hon'ble Bombay High Court vide its combined order No. 2059 of 2018 assessee's appeal No 1106 of 2022 dated 07-04-2022 (copy enclosed) disposed off the appeal of the revenue stating that there is no question of law involved. The ITO further, stated that as per the direction of jurisdictional PCIT, Mumbai has filed an Interim Application for restoration of appeal on 11-10-2022 before the Hon'ble Bombay High Court against its order No 1106 of 2022 dated 07-04-2022 which is to be still scheduled to be hearing.

The ITO-22(3)(6), Mumbai has also submitted comments of his PCIT's which is reproduced as under

"This is a search and seizure case and does not pertain to this bunch of cases. Interim Application to be filed for restoration of these appeals T.E. is Rs. 3.16 Crores."

The copy of acknowledgement of filing Interim Application dated 11-10-2022 before Bombay High Court and order of High Court dated 07-04-2022 emailed by ITO-22(3)(6), Mumbai alongwith ITAT's order is enclosed for your ready reference.

In view of the above facts it is requested that appeal to be contested by the department before Hon'ble ITAT, Jodhpur Bench.”

8. We have heard the ld. DR and perused the written submissions and the orders of the lower authorities. The ld. DR vehemently argued that in the case of Shri Suresh Jain (Prop. Rajguru Bullion) the matter is pending before the Hon'ble Mumbai High Court and therefore, though it has been decided by the ld. CIT(A) and ITAT, in the case of Shri Suresh Jain (Prop. Rajguru Bullion) that where the protection addition is made is considered by the appellate authority. The relevant findings of the ld. CIT(A) is reproduced hereinbelow:-

“5. I have vide my order no. no CIT(A)C-VII/DCCC-1341-113/06-07 dated 24.5.2007 in the case of Shri Suresh Jain (Prop. Rajguru Bullion) have held that the gold bullion found in the possession of the Appellant is part of stock in trade of M/s Rajguru Bullion and is properly accounted for in the books of accounts of M/s Rajguru Bullion and hence fully explained in the hands of Shri Suresh Jain (Prop M/s. Rajguru Bullion).”

On perusal of the above order of the ld. CIT(A) and also finding of the ITAT in the case of Shri Suresh Jain where in the against the above order of the ld. CIT(A) even ITAT has not considered the plea of the revenue for deleting the substantive addition. Considering the fact that where in the issue where the substantive addition were made is disposed off on merits in the case of Shri Suresh Jain and therefore, we do not find any reason to sustain the protective addition at this stage merely on the ground that the Revenue has against the

order of ITAT preferred an interim application before the Hon'ble Mumbai High Court. Based on these observations, we do not find to consider the arguments of the ld. DR and therefore, the appeal of the Revenue stands dismissed.

9. Since the appeal of the Revenue in ITA No. 5090/Mum/2007 for the assessment year 2005-06 has been decided against the revenue, therefore the decision taken therein shall also apply mutatis mutandis in the appeal of the Revenue bearing ITA No. 5089/Mum/2007 on similar facts and circumstances of the case (supra). Hence, this appeal of the Revenue is dismissed

In the result, the appeals of the Revenue are dismissed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)  
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 03/10/2023

*\*Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT

4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench