

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.692/Ind/2017**  
**(Assessment Years:2014-15 )**

Omprakash Gupta Bhopal	Vs.	ACIT (Central)-II Bhopal
(Appellant / Assessee)		(Revenue)
<b>PAN: AELPG 3485 J</b>		
Assessee by	Shri S.S. Deshpandey, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	31.08.2023	
Date of Pronouncement	31.08.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the order dated 14.09.2017 of Commissioner of Income Tax(Appeal), for Assessment Year 2014-15. The assessee has raised following revised grounds of appeal:

*“1.That on the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) was not justified in holding that the Learned AO was not justified in making addition of Rs. 8,40,000/- towards unsecured loans received treating the same as unexplained.*

*2. That on the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) was not justified in holding that the Learned AO was justified in making addition of Rs. 1,00,000/- towards capital investment made holding the investment as made out of unexplained sources.*

3. That on the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) was not justified in holding that the Learned AO was justified in making addition of Rs. 2,00,000/- towards estimated alleged unexplained expenses made on foreign tour.

4. That on the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) was not justified in giving a relief of only 100 grams of gold jewellery found and confirming the balance addition out of total addition of Rs. 10,24,005/- made by the AO towards alleged unexplained investment in jewellery.

5. That the assessee craves leave to add, alter, delete or modify any ground(s) of appeal during or before the hearing of the appeal.”

2. Earlier the appeal of the assessee was disposed of by this Tribunal vide order dated 28.01.2022 along with appeal of the assessee for A.Y.2013-14. Thereafter, on the Misc. Application of the assessee in MANo.11/Ind/2022 the Tribunal recalled the order for deciding the appeal of the assessee fresh vide order dated 04.08.2023 in para 4 to 6 as under:

“4. Having considered the rival submission and carefully perusal of the impugned order of the Tribunal, we find that so far as the order of the Tribunal for A.Y.2013-14 in ITANo.282/Ind/2017 is concerned the assessee has accepted that there is no mistake in the said order except some of the finding given by the Tribunal related to the assessment year 2014-15. Accordingly Misc. Application No.10/Ind/2022 is dismissed as no mistake crept in the impugned order for A.Y.2013-14. The Tribunal for A.Y.2014-15 in ITANo.692/Ind/2017 has decided three grounds in para 13 to 17 at page no.6 & 7 as under:

“13. Ground No 1:- The Ld. Counsel for the assessee does not want to press this ground. Therefore, this ground is dismissed as not pressed.

14. Ground No. 2 is identical to that of the Ground No. 2 of IT(SS)A No. 282/Ind/2017 and in the absence of any changed circumstances the same shall apply mutatis mutandis.

15. *Ground No. 3: Addition of Rs. 45,000/- towards unexplained gift is the issue before us.*

16. *We have heard the parties, and perused the relevant materials available on records.*

17. *The assessee received gift of Rs. 45,000/- from his mother who was an agriculturist and claimed to have been given such gift out of the withdrawals made by her from her bank account maintain with SBI, Dabra. Such confirmation of the gift was obtained from her son Ashok Gupta since the mother of the assessee has already expired. Before the Ld. CIT(A) the evidence of sale of agricultural produce along with the balance sheet were also produced as additional evidence. However, the Ld. CIT(A) was not satisfied as regards the creditworthiness of the doner and confirmed the addition made by the Ld. AO.”*

5. *These findings of the Tribunal do not relate to the grounds of appeal of the assessee which read as under:*

*“1. That on the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) was not justified in holding that the Learned AO was not justified in making addition of Rs. 8,40,000/- towards unsecured loans received treating the same as unexplained.*

*2. That on the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) was not justified in holding that the Learned AO was justified in making addition of Rs. 1,00,000/- towards capital investment made holding the investment as made out of unexplained sources..*

*3. That on the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) was not justified in holding that the Learned AO was justified in making addition of Rs. 2,00,000/- towards estimated alleged unexplained expenses made on foreign tour.*

*4. That on the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) was not justified in giving a relief of only 100 grams of gold jewellery found and confirming the balance addition out of total addition of Rs. 10,24,005/- made by the AO towards alleged unexplained investment in jewellery.*

*5. That the assessee craves leave to add, alter, delete or modify any ground(s) of appeal during or before the hearing of the appeal.”*

*6. Therefore, we find that there is an apparent mistake in the finding of the Tribunal in para no.13 to 17 at page no.6 & 7 of the impugned order as the grounds of the assessee were not adjudicated while passing the impugned order. Accordingly the order of the*

*Tribunal to the extent of disposing of the appeal in ITANo.692/Ind/2017 for A.Y.2014-15 in para no.13 to 17 at page no. 6 & 7 is recalled for fresh adjudication of the appeal. The registry is directed to fix the appeal of the assessee for fresh hearing and adjudication on 17.08.2023. Since the date of hearing of the appeal is pronounced in open court and has been noted by both the parties therefore, no separate notice be issued in this respect.”*

3. Therefore, in the earlier order the Tribunal has not given specific finding on the grounds of appeal of the assessee for A.Y.2014-15 though the issue involve were considered by the tribunal while giving the finding for A.Y.2013-14. Further one of the issue in ground no.3 was also not adjudicated by the Tribunal. Therefore, this appeal of the assessee was directed to be listed for fresh hearing and adjudication.

4. Ground No.1 is regarding the addition of Rs.5,90,000/- on account of unexplained credit.

4.1 Ld. AR of the assessee has submitted that the AO has made the addition of Rs.8,40,000/- in respect of five creditors for want of confirmation and other details from the creditors. He has pointed out that the assessee filed confirmation with PAN in case of all the creditors and also requested the AO to obtain the other details from the creditors by issuing notice u/s 131. He has referred to the assessment order and submitted that the AO has also recorded this fact as the assessee made a request for obtaining the details from creditors by issuing notice u/s 131 of the Act. Further before the CIT(A) the assessee has specifically stated that he has not received any loan from Shri Vijay Laxman Athyle and Shri Vikas Kohli for which the AO has made the addition during the year under consideration. He has referred to the balance sheet of the assessee for the year under consideration at page no.35 and submitted that the balance has been shown at Rs.5 lac each which are also shown in the balance sheet as on 31.03.2013 at page 28 of the paper book and thus no fresh loans were received from these parties during the year under consideration. The other loans as shown by the assessee are received from

the relatives and are very small and therefore, the genuineness of the transactions cannot be questioned.

4.2 He has further submitted that the tribunal while passing the order dated 28.01.2022 in respect of appeal for A.Y.2013-14 has also decided this issue in para 4 to 6. Thus, the Ld. AR of the assessee that in view of the finding of the Tribunal the addition made by the AO is liable to be deleted.

5. On the other hand, Ld. DR has not disputed that the tribunal in the order dated 28.01.2022 has also discussed this issue though the said observation and finding was made by the Tribunal while considering the appeal of the assessee for A.Y.2013-14.

6. We have considered the rival submissions as well as relevant material on record. The AO has made the addition of Rs.8,40,000/- u/s 68 of the Act in respect of five creditors as under:

1.	Smt. Preeti Gupta	Rs. 17,000/-
2.	Smt. Jyoti Gupta	Rs.17,000/-
3.	Shri Neeraj Soni	Rs. 16,000/-
4.	Shri Vijay Laxman Athyle	Rs.6,90,000/-
5.	Shri Vikas Kohli	Rs.1,00,000/-
	TOTAL	Rs. 8,40,000/-

6.1. It is apparent from the balance sheet as on 31.03.2013 as well as 31.03.2014 at page no.28 & 35 of the paper book that there is no fresh loan taken by the assessee from these two persons and the balance which was appearing as on 31.03.2013 is also appearing as on 31.03.2014. The assessee has specifically stated that the assessee has not taken any loan from shri Vijay Laxman Athyle of Rs.6,90,000/- and Shri Vikas Kohli of Rs.1 lac as alleged by the AO. We further note that the tribunal while

passing order dated 28.01.2022 has considered this issue in para 4 to 6 as under:

*“4. The brief facts leading to the case is this that the assessee an individual deriving income from profits from partnership firm, rent and other sources filed its return of income on 22.11.2013 declaring income at Rs. 8,36,860/- for A.Y. 2013-14.*

*Subsequently, a search was undertaken at the residence of the assessee and the business premises of the other related concerns as well and the business estates of Signature Group on 21.09.2014. No incriminating material was claimed to have been found during the course of the search in respect of any transaction of the assessee as claimed. However, in response to the notice u/s 153A of the Act the assessee filed its return of income declaring the income as already disclosed in the original return. Another argument of the assessee is this that no addition / disallowance can be made in the assessment proceeding passed under section 153A of the Act since no incriminating material was found and seized.*

*5. We have heard the parties, and perused the relevant materials available on records.*

*6. During the assessment proceeding the assessee was asked to submit the details of unsecured loans received by him from different parties. Certain details like confirmation, copy of bank statement, copy of balance sheet, ITR details of two persons for whom the loan was taken were directed to be submitted upon which the assessee submitted the copy of confirmation etc. in respect of unsecured loans. However, other supporting documents could not be furnished by the assessee. The assessee made a categorical representation to the Ld. AO stating that such details were not provided by the lenders and the same could be obtained from them directly by the department. However, such submission of the assessee was not accepted and finally the impugned addition was made. Before the Ld. CIT(A) complete details of unsecured loans were duly filed by the assessee whereupon a remand report was called for. The fact that the assessee did not receive loan from Shri Vijay Laxman Athyle and ShriVikas Kohli brought to the notice of the Ld. CIT(A) duly supported by the balance sheets which is appearing at page 5 of the Paper Book filed before us wherein it is shown that the balances was at Rs. 5lacs each and the same was also reflecting in the balance sheet of 2013, appearing tat Page 28 of the Paper Book filed before us. However, the Ld. CIT(A) was not satisfied with such plea and/or submissions and/or documents placed before him by the assessee and therefore, the addition made by the Ld. AO was confirmed.*

*We do not find any justification for not accepting the evidences placed by the assessee showing no such loan received from these two*

*parties by the Ld. CIT(A). We, therefore, decline to accept the addition made thereon. Further that the other loan taken from few parties are very of small amount. Since the same were received from the relatives no justification of addition is found by us to that effect. Therefore, the impugned addition of Rs. 11,25,000/- is without any basis and hence deleted.”*

6.2 Thus, it is clear that the Tribunal has specifically observed that the assessee did not receive any loan from Vijay Laxman Athyle and Shri Vikas Kohli during this year which is duly supported by the balance sheet and held that there is no justification for not accepting the evidence placed by the assessee showing no such loan received from these two parties by the Ld. CIT(A). Accordingly this ground of appeal is decided in favour of the assessee and the addition made by the AO to the extent of Rs.5,90,000/- is deleted.

7. Ground no.2 is regarding the addition on account of interpretation of share capital of Rs.1 lac in M/s Sapphire Builders and Developers partnership firm wrongly mentioned in the assessment order as Private Limited.

7.1 Ld. AR of the assessee has submitted that the assessee produced before the AO the cash book, balance sheet and cash flow statement to show the source of the said amount of Rs.1 lac capital introduced by the assessee in the said partnership firm. The AO has not examined the correctness of the evidence produced by the assessee but made the disallowance only on the ground that the assessee has taken contradictory stand to the earlier submissions. Ld. AR has submitted that the ground on which the AO has made this addition is highly arbitrary and unreasonable when the assessee has produced the documentary evidences in support of the source of the said amount introduced as share capital in the partnership firm. He has further submitted that the assessee has substantial income of Rs.9,67,000/- being rent and salary. He has referred to the computation of the income filed along with return of income and submitted that when the assessee was having more than sufficient income during the year under consideration then the source of

the said amount of Rs.1 lac stand explained and onus on the assessee also stood discharged. He has referred to the balance sheet giving all the details along with investment of this amount in the partnership firm. Thus, the Ld. AR has submitted that the source has been explained by the assessee by production of balance sheet, cash book as well as income of the assessee declared for the year under consideration of Rs.9,67,000/-.

8. On the other hand, ld. DR has relied upon the orders of the authorities below.

9. We have considered the rival submissions as well as relevant material on record. In the balance sheet and schedule-E to the balance sheet at page no.36 of the paper book the assessee has clearly shown this investment of Rs.1 lac in the partnership from M/s Sapphire Builders and Developers. The assessee has also produced the cash book shown inflow and withdrawal of this amount. Therefore, the source of investment has been established by the assessee from the books of account as well as the income declared by the assessee for year under consideration. Accordingly in the facts and circumstances of the case the addition made by the AO of Rs.1 lac on account of introduction of capital in the partnership firm is deleted.

10. Ground no.3 is regarding the disallowance of traveling expenses of Rs.2 lac. The Ld. AR has submitted that the identical issue has been considered by Tribunal in assessee's own case for A.Y.2013-14 in para 9 and the Tribunal has estimated the expenses on foreign travel at Rs.37000/- for A.Y.2013-14 as against the addition made by the AO of Rs.4 lac.

11. On the other hand ld. DR has relied upon the orders of the authorities below.

12. We have considered the rival submissions as well as relevant material on record. An identical issue has been considered by this tribunal in assessee's own case for A.y.2013-14 in para 8 & 9 as under:

“8. We have heard the parties, and perused the relevant materials available on record.

9. A tour to Thailand and Macau was undertaken by the assessee during the Assessment Year 2013-14 alongwith his wife and one tour was undertaken independently to Thailand. The claim of the assessee before the Ld. AO is that the tour alongwith his wife to Thailand was undertaken in January 2013 was a personal foreign tour and others were business tours. It was submitted by the assessee that the total expenses of the tour was of Rs.55,000/- in terms of the advertisement of various travel agencies like SOTC and Thomas Cook. The Ld. AO rejected the plea of the assessee and estimated the expenditure at a very high figure and addition of Rs. 4,00,000/- for the year under consideration was made as unexplained expenditure which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

Upon perusal of the records we find that the quotations of the two agents show Thailand Tour cost at Rs. 25, 670/- to Rs. 31,000/-. We do not find any contrary document relied upon by the Revenue which could justify the addition of Rs. 4,00,000/-. We, therefore, in the absence of any contrary document restrict the addition to Rs. 75,000/- only.”

13. Thus the Tribunal after considering quotations of the travel agencies estimated expenditure on foreign tours at Rs.75,000/- as against addition made by the AO of Rs.4 lac. Therefore, in view of the earlier order of this Tribunal the addition on this account is restricted to Rs.35000/-. This ground of appeal is partly allowed.

14. Ground no.4 is regarding the addition made by the AO in respect of the jewellery found from the bank locker.

15. We have considered the Ld. AR as well as Ld. DR. At the outset, we note that this issue has been considered by this Tribunal while passing the order dated 28.01.2022 in para 11 & 12 as under:

11. We have heard the parties, and perused the relevant materials available on records.

12. It is the case of the assessee that the jewellery possessed by the father of the assessee was of 100 gms. and left by the mother who also passed away in November 2011. Though the same fact was brought to the notice of the Ld. CIT(A) the same was not considered by

*him. In Fact, the registered will of mother executed on 01.07.2010 showing possession of 800 grams of jewellery which is on record even before us in the Paper Book filed in the matter of Rajbala Gupta appearing at Page No. 78 has not been considered by the lower authorities in its proper perspective. Thus, we do not find any justification in regard to such addition made by the authorities below and therefore, the same is hereby deleted.”*

Accordingly in view of the finding of the Tribunal the addition made by the AO stands deleted.

16. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 31.08.2023.

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 31.08.2023**

**Patel/Sr. PS**

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*