

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1544/Mum/2023

(A.Y: 2019-20)

ACIT-CC-5(4), Room No.1924,19 th Floor, Air IndiaBuilding, Nariman Point, Mumbai-400021.	Vs.	Mrs.RashmiYogendra Kanodia(Legal heir of Late Shri Yogendra surajmal kanodia) 1 st Floor,Samudra Tarang, KeluskarRoad, NorthShivajiPark,Dadar, Mumbai-400028.
PAN/GIR No. : AADPK4863A		
Appellant	..	Respondent

Appellant by :	Shri.Rameshwar Meena.Sr.DR
Respondent by :	Shri.Ajay.R.Singh.AR

Date of Hearing	12.10.2023
Date of Pronouncement	22.12.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the CIT(A) passed u/sec 143(3) and U/sec 250 of the Act. The revenue has raised the following grounds of appeal:

1. *On the facts and circumstances of the case, the Ld CIT(A) erred in restricting the addition to Rs. 52,258/- from Rs 1,17,18,360/- made u/s 69A on account of unexplained/un-reconciled jewellery even when the CIT(A) himself has found out*

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that total jewellery of Rs. 8,43,67,583/-, the assessee has been able to reconcile itemwise jewellery or gave sufficient explanation to the extent of Rs. 7,26,49,223/- only, thus, the differential jewellery of Rs. 1,17,18,360/- stands reconciled/unexplained."

2 "On the facts and circumstances of the case, the Ld CIT(A) erred in accepting the contention of the assessee that itemwise discrepancy is on account of remade or refurbished the jewellery from time to time even when such contention of the assessee was without any corroborative evidences."

3 "On the facts and circumstances of the case, the Ld CIT(A) erred in treating the purchase of jewellery from M/s Raghukul Diamonds Put Ltd of Rs.67,21,090/- as genuine when the director of the said company stated that the company is not dealing in diamonds and the financial characteristic of the company reveals that it is a shell company and was strike off by MCA."

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

2. The brief facts of the case are that, there was a search and survey operations conducted u/sec 132 & u/sec133A of the Act on 10-05-2018 in the case of "Matix (Nishant Kanodia) Group. Consequent to search, the assessee's case was centralized to the office of ACIT Central Circle. Subsequently, the assessee has filed the return of income for the A.Y 2019-20 on 29.08.2019 disclosing a total income of Rs.85,02,610/-.Whereas The Assessing Officer

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(A.O.) has issued notice u/sec 143(2) and U/sec142(1) of the Act through ITBA Portal. In compliance to notice the assessee has filed the details and information. The AO has dealt on the seized and impounded material found in the search and survey operations. The AO on perusal of the information found that, the assessee was in possession of gold and diamond jewellery as per the valuation report dated 11.05.2018 Rs. 8,43,67,583/- and the A,O has issued the show cause notice to explain the proof of acquisition and sources. Whereas the assessee has filed the detailed explanations along with the supporting information dealt at Para 3.3 of the order as under:

“3.3 In response to same, the assessee vide submission dated 31.05.2021 and 6.2021 filed in this office on 18.06.2021. The relevant extract of the submissions e by the assessee are reproduced as under:

"31.05.2021

2. In this regard we would like to state that on the date of search 12.05.2018 the Income Tax department has valued total Jewellery at Rs. 12,58,22,017/-for your assessee Shri. Yogendra Kanodia, Yogendra Kanodia HUF Smt. Rashmi Kanodia, Shri Siddharth Kanodia, Shri Nishant Kanodia and Smt Smiti Kanodia. Out of the said jewellery amounting to Rs4,14,54,434/- belonging to Smt Smiti Kanodia and Nishant Kanodia were matched item to item with the valuation report as on 31.03.2015 of Smt Smiti Kanodia forming part of Wealth Tax

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Return of A.Y2015-16Accordingly the jewellery amounting to Rs8,43,67,583 (12,58,22,017-4,14,54,434) belonging to Shri Yogendra Kanodia, Yogendra Kanodia HUF Smt Rashmi Kanodia Shri Siddharth Kanodia is to be considered for this submission.

3. It is submitted that your assessee along with Yogendra Kanodia HUF Smt Rashmi Kanodia, Shri Siddharth Kanodia has Jewellery Valuation report as on 31.03.2002. The Wealth Tax Returns have been filed for A.Y2003-04 considering such valuation reportsThe copies of the said valuation reports and the Wealth Tax Returns for AY2003-04 are enclosed for your honour's ready perusal Thereafter the Wealth Tax Returns were filed regularly considering the same amount of jewellery as per the Valuation report plus the purchases made thereafter The copies of the ledger account for the period 01.04.2001 till date reflecting the purchases made are enclosed for your ready perusal Further we are enclosing the copies of Wealth Tax return of your assessee along with Yogendra Kanodia HUF, Smt Rashmi Kanodia, Shri Siddharth Kanodia for A.Y2015-16. It is submitted that the computation of jewellery for the purpose of Wealth Tax Returns is simply considered by adding the value of purchases made subsequent to 31.03.2002 to the value of Jewellery as per the Valuation Report of 31.03.2002

3. The Working of Wealth Tax Return (WTR) is explained as under:

3.1 Yogendra Kanodia

Particulars	Amounts In Rs
Value of Jewellery as per Valuation Report of 31.03.2002	8,98,644
Purchases made till 31.03.2015 from year to year as per	79,59,173
Value of Jewelleary as per WTR A.Y	88,57,817

2015-16	
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3.1.1 It is submitted that your assessee has made purchase of jewellery amounting to Rs. 79,59,173/- between 31.03.2002 to 31.03.2015 and all payments for the said purchases are made through banking channels by issuing cheques and the same can be reflected from the ledger account enclosed above. Further out of the jewellery purchased of Rs. 79,59,173/-, copies of two bills in relation to purchase of jewellery amounting to Rs.40,35,920/- are in possession of assessee and the same are enclosed for your honour's ready perusal. This explains the Wealth Tax Return was filed for A.Y.2015-16 considering the base of Valuation report of 31.03.2002 plus the purchases made thereafter till 31.03.2015.

3.2 Rashmi Kanodia

In case of Smt Rashmi Kanodia certain jewellery was received by way of gift worth Rs. 2,03,17,442/- from Smt Manju Ruia. These gifts were supported by gift deed dated 22.09.2009 and valuation report dated 26.09.2009. The copy of the Gift deed dated 28.09.2009 along with the Valuation report dated 26.09.2009 is enclosed for your honour's ready perusal.

<i>Particulars</i>	<i>Amounts In Rs</i>
<i>Value of Jewellery as per Valuation Report of 31.03.2002</i>	<i>24,49,087</i>
<i>Plus Gift received as per the valuation report dated 26.09.2009</i>	<i>2,03,17,442</i>
<i>Plus Purchases / payment made till 31.03.2015 from year to year as per ledger</i>	<i>28,588</i>
<i>Value of Jewellery as per WTR A.Y 2015-16</i>	<i>2,27,95,117/-</i>

3.2.1 The above table also explains the Wealth Tax Return was filed for A.Y.2015-16 considering the base of Valuation report

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of 31.03.2002 plus the gifts received from SmtManju Ruia plus the payments made till 31.03.2015 as appearing in the ledger account of the jewellery

3.3 Siddharth Kanodia

Particulars	Amounts In Rs
Value of Jewellery as per Valuation Report of 31.03.2002	9,74,712
Plus purchase made till 31.03.2015 as per ledger	NIL
Value of Jewelleary as per WTR A.Y 2015-16	9,74,712

3.3.1 The above table also explains the Wealth Tax Return was filed for A.Y2015-16 considering the base of Valuation report of 31.03.2002 plus the purchases made thereafter till 31.03.2015.

3.4 Yogendra Kanodia HUF

Particulars	Amounts In Rs
Value of Jewellery as per Valuation Report of 31.03.2002	11,63,003
Plus purchase made till 31.03.2015 as per ledger	34,81,777
Total	46,44,780
Value of Jewelleary as per WTR A.Y 2015-16	42,14,270

3.4.1 It is submitted that Yogendra Kanodia HUF has made purchase of jewellery amounting to Rs34,81,777/-between 31.03.2002 to 31.03.2015 and all payments for the said purchases are made through banking channels by issuing cheques and the same can be reflected from the ledger accounts enclosed above Further out of the jewellery purchased of Rs34,81,777/-, copies of two bills in relation to purchase of jewellery amounting to Rs. 20,83,923/- are in possession of assessee and the same are enclosed for your honour's ready

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perusal This explains the Wealth Tax Return was filed for A.Y2015-16 considering the base of Valuation report of 31.03.2002 plus the purchases made thereafter till 31.03.2015 as appearing in the ledger account of the jewellery.

3.5 It is submitted that no Jewellery Valuation Report was made as on 31.03.2015 for the purpose of filing the Wealth Tax Return, as these return were filed considering the jewellery valuation reports of 31.03.2002 as base and adding the value of jewellery purchases made thereafter The same is explained in detailed in the above paragraphs 3.1 to 3.4. It is submitted that as per the ledger accounts enclosed above relating to the jewellery purchases, it is evident that all purchases are made through banking channels and no cash has been utilized for making such purchases.

3.6 It is submitted that during the course of search it was duly explained that Wealth Tax Returns were filed in the manner explained in the earlier paragraphs It is submitted that the Income Tax Authorities on search duty failed to understand this fact of deriving the value of jewellery for WTR purpose. It is submitted that the Income Tax Authorities had made an abrupt illogical and arbitrary working and had made seizure of jewellery valuing Rs. 3,01,25,502/- on approximation basis. It is submitted that the Authorities have made the value of Jewellery as on 31.03.2015 as base and has derived the value of the jewellery as on the date of search i.e.11.05.2018It is submitted that the authorities failed to understand that value the jewellery as on 31.03.2002 plus the jewellery received through gift deeds plus the purchases as reflected in ledger accounts should be considered for the purpose of arriving the value of jewellery on the date of search

3.7 It is submitted that we are enclosing the working of jewellery matched with the Valuation Report of 11.05.2018 of

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the department as on the date of search along with the Assessee's respective valuation reports and available purchase bills Also we are enclosing the copies of Wealth Tax Returns of Smiti Kanodia for A.Y2015-16 along with the Jewellery Valuation Report as on 31.03.2015 dated 01.04.2015 and Jewellery Valuation Report of Shri. Nishant Kanodia as on 31.03.2002 dated 11.06.2002 This clarifies the Jewellery found during the course of search. The detailed working is attached and the summary is as under:

<i>Particulars</i>	<i>Amt in Rs.</i>
<i>Total Jewellery found during the search as per para 2 above</i>	<i>8,43,67,583</i>

Summary of Jewellery matched with the valuation report of:

1 .Out of Jewellery Gifted to Rashmi Kanodia- 5,05,39,761

2. .Rashmi Kanodia from VR of 2002- 65,40,220

3 Yogendra Kanodia from VR of 2002 - 32,65,268

4.Siddharth Kanodia from VR of 2002 - 12,69,232

5 Yogendra Kanodia HUF from VR of 2002 - 30,06,102

6.Nishant Kanodia from VR of 2002 - 5,96,009

7Combined Gold Chains, EarringsTopsBangles matched Jewellery from Valuation reports of 2002 of RYK, YSKYSK HUF SYK and NYK - 16,70,053

8.Copies of bill made available and matched with the Valuation report of 18.05.2018 of:

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A Yogendra Kanodia Bill value Rs40,35,920 and Appreciated value as per Valuation report of 18.05.2018 is: 67,61,135

B Yogendra Kanodia HUF Bill value Rs23,67,070 and Appreciated 60,98,152 value as per Valuation report of 18.05.2018 is: 60,98,152

C Rashmi Kanodia Bill value Rs579,876 and Appreciated value as per 7,08,210 Valuation report is: 7,08,210

9 Smiti Kanodia for VR 2015 – 9,88,225

10 Gift from Assessee's mother SmtChandravatji Kanodia (95 years) to SmtRashmi Kanodia (Srno40 of Jay D Parekh Valuation report dated 11.05.2018) (refer para 4.3) - 12,99,600

11 Gift from Assessee's mother SmtChandravatji Kanodia to SmtRashmi Kanodia (refer para 4.3.1) 53,508

12 Jewellery made from loose cut and polished diamonds and only labour charges paid for making as per the payment reflected in ledger of Yogendra Kanodia (refer para 4.4 below) - 628,703.

Balance for which details are as under: C=(A-B) 9,43,405.

Jewellery for items appearing in WTR of AY2015-16 and appearing in the ledger account of respective assessee at appreciated value.

Yogendra Kanodia 53,73,557

(see working at point no.4.1.1 below)

Yogendra Kanodia HUF 28,00,964 81,74,522

see working at point no.4.2.1 below)

Unmatched Items of Valuation reports of 2002 of ShriYogendra KanodiaYogendra Kanodia HUF, SmtRashmi Kanodia Shri. Siddharth Kanodia without considering the appreciated value till date of search : 9,37,401

Total - 91,11,923

4. Year wise details of jewellery considered for the purpose of in wealth tax return of A.Y 2015-16 as appearing in the ledger account of the assessee and its HUF for reconciliation purpose:

4.1 Yogendra kanodia

F.Y	Items matching with VR and Bill available	Items from VR and considered in WTR of A.Y 2015-16 appearing in ledger account	Total in Rs.
A	B	C	D
2002-03	0	62,740	62,740
2007-08	0	6,15,530	6,15,530
2010-11	40,35,920	5,28,720	45,64,640
2011-12	0	22,10,763	22,10,763
2013-14	0	5,05,500	5,05,500
Total	40,35,920	39,23,253	79,59,173

The equivalent value of jewellery for bills available in Rs. 67,61,135/- as per the department valuation report dated 11.05.2018.

4.1.1 Working of appreciation of value of jewellery (as appearing in column C) as appearing in the ledger account Gold jewelleary is as under:

F.Y	Value jewellery	Rate of gold in the respective year	Rate of gold on the date of search as per department	Apprecia tion in %	Appreication Value in Rs.
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		<i>per gram</i>	<i>VR per gram</i>		
2007-08	62,740	449	2517	460.45	3,51,629
2008-09	6,15,530	972	2517	158.95	15,93,919
2009-10	5,28,720	1870	2517	34.62	7,11,747
2010-11	22,10,763	2524	2517	0	22,10,763
2011-12	5,05,500	2562	2517	0	5,05,500
<i>Total</i>	<i>39,23,253</i>	-	-	-	<i>53,73,557</i>

4.2 *Yogendra Kanodia HUF*

<i>F.Y</i>	<i>Items matching with VAR and Bill available</i>	<i>Items from VR and considered in WTR of A.Y 2015-16 appearing in ledger account</i>	<i>Total in Rs.</i>
<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>
2007-08	0	9,85,197	9,85,197
2008-09	2,83,147	0	2,83,147
2009-10	0	1,29,510	1,29,510
2010-11	15,53,100	0	15,53,100
2011-12	5,30,823	0	5,30,823
<i>Total</i>	<i>23,67,070</i>	<i>11,47,007</i>	<i>34,81,777</i>

The equivalent value of jewellery for bills available is Rs. 60,98,152/- as per the department valuation report dated 11.05.2018.

4.2.1 Working of Appreciation in value of jewellery (as appearing in column C) as appearing in the ledger account presuming Gold jewellery is as under:

<i>F.Y</i>	<i>Value Jewellery in Rs.</i>	<i>Rate of gold in the respective year per gram</i>	<i>Rate of gold on the date of search as per department VR per gram</i>	<i>Appreciation</i>	<i>Appreciated value</i>
2007-08	9,85,197	972	2517	158.95	25,51,174
2009-10	1,29,510	1305	2517	92.87	2,49,791
<i>Total</i>	<i>11,74,007</i>				<i>28,00,964</i>

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4.3 It is submitted that the mother of the assessee Smt. Chandravatiji Kanodia (presently 95 years of age as on date) had gifted jewelleries to Smt Rashmi Kanodia in 2007-08 on account of distribution of her jewellery to her family members and the details of the same is as under:

a. Smt. Chandravatiji Kanodia had gifted her diamond earnings in A.Y2007-08 to Smt.Rashmi Kanodia which she had converted into a diamond pendant which is appearing at Serial no40 of Jay D Parekh valuation report dated 11.05.2018 which is valuing at Rs12.99 lakhs The Photograph of Smt Chandravatiji Kanodia wearing the earring is enclosed Further we are also enclosing a photograph of Smt Chandravatiji Kanodia and SmtRashmi Kanodia togetherin which SmtRashmi Kanodia is wearing the diamond pendant (converted from earning gifted)

b. Smt Chandravatiji Kanodia had also gifted her a diamond bracelet in gold with one green stones which is appearing at Serial no69 of Jay D Parekh valuation report dated 11.05.2018 which is valuing at Rs.53,508/

4.4 It is submitted that your assessee has made payment of Rs12,500/- on 28.11.2002 Fo Meru Daimonds as Labour charges for jewellery making for 3 diamond pendants and 3 diamond bangles from the loose cut and polised diamonds of 17.7 cts available with the assessee which are appearing at Srno2 of Jewellery valuation report of 2002In this regard is submitted out of 17.7 cts, diamonds of 13.85 cts were used for making 3 diamond bangles and 3 diamond pendants which are appearing at Jay D Parekh's jewellery valuation report of 1.05.2018 at Sr.no30, 41, 4258 and 59 valuing to Rs6,28,703/-After utilizing the iamonds of 13.85 ctsthe balance 3.85 cts (17.7-13.85) were used in other jewellery

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4.5 It is further submitted that the following loose cut and polished diamonds are available om Valuation reports of assessee and his family members which can be considered for alance jewellery of Jay D Parekh's valuation report of 11.05.2018:

Particulars	Sr. No.	Wt. In Cts
Assessee's valuation report of 2002	D2	3.85
Assessee's valuation report of 2002	D3	8.62
YSK HUF Valuation report of 2002	D15	15.05
Rashmi Kanodia Valuation report of 2002	D17	2.10
	Total	29.62 Cts

And balance of Giniis in Gold are available for jewellery making out of the valuation reports of assessee and his family members which can be considered for balance jewellery of Jay D Parekhs valuation report of 11.05.2018:

Particulars	Sr. No.	Wt. In Gms
Assessee's valuation report of 2002	7	40
Assessee's valuation report of 2002	8	4
Rashmi Kanodia Valuation report of 2002	6	40
Rashmi Kanodia Valuation report of 2002	7	2
Rashmi Kanodia Valuation report of 2002	10	5
Nishant Kanodia valuation report of 2002	6	40
	Total	131 grms

4.6 It is further submitted that the Jewellery Valuation reports of 2002 of appellant and his family consisting Yogendra Kanodia HUF, Smt Rashmi Kanodia Shri. Siddharth Kanodia has unreconciled jewellery amounting to Rs. 9,43,405/which are either converted into new jewellery or refurbished or remade from time to time using diamonds and gold from para 4.5 above Further the appellant and his family member are in receipt of jewellery in form of gifts on various occasions like birthdays anniversaries weddings festivals etc which are not considered in above working.

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5. In view of the above facts it is submitted that your assessee has fully explained the entire jewellery found on the date of search and also explained how the value of jewellery has been arrived at for the purpose of filing the Wealth Tax Return of AY. 2015-16 It is submitted that infact your has value of Jewellery of 2002 valuation report amounting to Rs9,37,401 /- which has not been considered at the appreciated value for the reason that the jewellery reconciled is more than the jewellery found on the date of search Accordingly there is no question of drawing any adverse inferences invoking the provisions of section 69A of the Income Tax Act1961 as complete jewellery stands explained. It is therefore prayed to your honor to release the jewellery of your assessee seized of Rs. 3,01,25,502/- on the date of search on the basis of arbitrary working and cooperate with your assessee.

6. With regard to the legal aspect of invoking the provisions of section 69A of the Income Tax Act1961 we would like to reproduce the provision of Section 69A of the Income Tax Act1961 which reads as under:

69A Where in any financial year the assessee is found to be the owner of any money bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of acquisition of the money, bullion jewellery or other valuable article or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

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6.1 It is submitted that the provisions of section 69A can be invoked only if the following cumulative conditions are complied:

a. The assessee is found to be owner of any money, bullion jewellery or valuable article which is not recorded in the books of account and

b. The assessee offers no explanation about the nature and source of such any money. bullion, jewellery or valuable article

In this regard we state that your assessee and its family members have duly recorded the jewellery in the books of account and the same is with the ledger accounts, jewellery purchase bill and the jewellery valuation reports which are referred as base for filing the Wealth Tax Returns from year to year Further your assessee during the course of search as well as through this submission has explained the nature and source of such jewellery acquired over the period of time. It is however submitted that your assessee is not required to maintain the books of account as per any statutory law of the country. Accordingly, since the first condition of section 69A relating to maintenance of books of accounts itself is not applicable then the second condition becomes in-applicable.

6.3 Further it is submitted that the provision of Section 44AA of the Income Tax Act 1961 relates to provision for maintenance of books of accounts by certain person carrying on profession or business We would like to provide the relevant extract of provision of Section 44AA of the Income Tax Act 1961 which reads as under:

Maintenance of accounts by certain persons carrying on profession or business

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44AA(1) Every person carrying on legal medical engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act

(2) Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,-

(i) if his income from business or profession exceeds one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be in business or profession exceed or exceeds ten lakh rupees in any one of the three years immediately preceding the previous year, or

(ii) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed one lakh twenty thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed ten lakh rupees, during such previous year; or

(iii) where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AE or section 44BB or section 44BBB as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year; or

(iv) where the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous

year, keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act:

Provided that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "one lakh twenty thousand rupees "the words "two lakh fifty thousand rupees" had been substituted:

Provided further that in the case of a person being an individual or a Hindu undivided family the provisions of clause (i) and clause (ii) shall have effect, as if for the words "ten lakh rupees"the words "twenty-five lakh rupees" had been substituted

The Board may having regard to the nature of the business or profession carried on any class of persons, prescribe, by rules, the books of account and other documents including inventories, wherever necessary) to be kept and maintained under sub-section (1) sub-section (2)the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained. (4) Without prejudice to the provisions of sub-section (3)the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.

5.4 It is submitted that the sources of income earned by your assessee is from Salaries, Capital gains and other sources No income from business or profession is ever earned by the assessee any time during the year under consideration as well in any of the earlier years. This can be substantiated by referring the computation of total income for the year under consideration as well of the earlier years.

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6.5 Further, this is to bring to your honour's notice that the assessee does not earn any profit or gains from any business or profession This means that there is no business or profession which has been independently carried out by the assessee during the year under consideration Therefore, the provision of Section 44AA of the Income Tax Act1961 is not applicable to the assessee during the year under consideration.

6.6 Regarding applicability of the provisions of section 115BBE of the Income Tax Act1961, we would like to reproduce the said the said provisions which reads as under:

115BBE. [(1) Where the total income of an assessee, -

a includes any income referred to in section 68, section 69section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

b determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered unde

clause (a)the income-tax payable shall be the aggregate of-

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]

(2) Notwithstanding anything contained in this Act no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any

provision of this Act in computing his income referred to in clause (a) 30 [and clause (b)] of sub-section (1).

6.7 It is submitted that from the plain reading of the above provisions, two conditions are required to be satisfied to attract the provision of clause (a) of Sub- section 1(1) of Section 115BBE of the Income Tax Act1961The two conditions are:

i) Total Income includes any income referred to in Section 68, Section 69, Section 69A, Section 69B, Section 69C or Section 69D and

ii) The said income are reflected in the return of income furnished under Section 139

6.8 In the instant case, the assessee is not satisfying the conditions of Section 115BBE(1)(a) of the Income Tax Act1961 as the assessee does not have any income referred to in Section 68Section 69, Section 69A, Section 69BSection 69C or Section 69D during the year under consideration.

6.9 Further, it is submitted that the examination of fulfillment of condition under Section 68, Section 69, Section 69A, Section 69BSection 69C or Section 69D are is pre-requisite before Section 115BBE can be invoked It is submitted that the assessee is not satisfying the conditions of Section 115BBE(1)(a) of the Income Tax Act1961 and therefore Section 115BBE are not applicable to the assessee during the year under consideration

6.10 It is submitted that the assessee does not require to maintain the books of accounts and therefore the question of application of Section 69A does not arise during the year under consideration Without prejudice to above your assessee has duly explained the nature and source of the jewellery in detailed in the above paragraphs. Therefore when Section 69A

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is not attracted then there is no question of attraction of Section 115BBE arises during the year under consideration.

Therefore, it is submitted Section 69A and Section 115BBE of the Income Tax Act 1961 are not applicable to the assessee during the year under TAX DE Consideration.

16.06.2021

With reference to the above and as per the instructions of above mentioned assessee, we would like to state that the abovementioned assessee is in receipt of your honour's notice u/s 142(1) of the Income Tax Act, 1961 dated 12.05.2021 for AY 2019-20 and in continuation to our online submission dated 15.05.2021 and 31.05.2021 we state as under :-

- 1. We are enclosing the working of replies/clarifications/explanations to the queries raised by your honour with regard to the jewellery reconciliation.*
- 2. Further we state that the unmatched / unreconciled items of jewellery from Jay D Parekh Valuation report dated 11.05.2018 has to be considered on account of following reasons:*
 - a. It is submitted that all the purchase of jewellery in case of assessee and its family members are made from banking channels and the same is evident from the jewellery ledgers of family members submitted to your honour.*
 - b. There are recorded purchases of jewellery in ledger account in case of Assessee amounting to Rs. 39,23,253 (refer to para 4.1 of submission dated 31.05.2021) which could not be reconciled with the Jay D Parekh Valuation report due to non-availability of bills. However, few copies of bills amounting to Rs. 31,46,463 are now found out of the above amount and the same are enclosed for your reference.*

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C. Similarly, in case of Yogendra Kanodia HUF there are recorded purchases of jewellery in ledger account amounting to Rs11,47,007 (refer to para 4.2 of submission dated 31.05.2021) which could not be reconciled with the Jay D Parekh Valuation report due to non-availability of bills. However, a copy of bills amounting to Rs78,000/ is now found out of the above amount and the same are enclosed for your reference.

d. Further there are 29.62 carats of cut and polished diamonds available (refer to para 4.5 of submission dated 31.05.2021) from Jewellery Valuation of reports of 2002 of assessee and its family members which could not be reconciled with the Jay D Parekh Valuation report due to non-availability of jewellery making/ remaking bills. Further we are now enclosing one bill dated 02.11.2011 of Nishant Kanodia for Purchase of Cut and polished diamonds weighing 3.01 carats. So the Total cut and polished Diamonds available are 32.63 (29.62 + 3.01) cts which remains un-reconciled and the same are used for making new jewellery / remaking or modifying the old items.

e. Also there is 131 grams of Gold in Ginnis available (refer to para 4.5 of submission dated 31.05.2021) from Jewellery Valuation of reports of 2002 of assessee and its family members which could not be reconciled with the Jay D Parekh Valuation report due to non-availability of jewellery making/remaking bills.

f. We are enclosing the copy of letter dated 21.05.2001 written by Smt. Rashmi Kanodia to Shri Pradeep Jhaveri requesting him for removing the diamonds and returning the unset khokha and diamonds in loose form. Further we are also enclosing the a letter dated 27.05.2001 from Shri Pradeep Jhaveri to Smt Rashmi Kanodia acknowledging the above letter and returning the unset khokha and diamonds in loose form. It is submitted

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that the above correspondence is evident to prove that assessee and his family members used to remake/refurbish the existing jewellery into new jewellery Further we are also enclosing few labour bills now found for remaking/refurbishing the existing jewellery.

g. Further the assessee and his family member are in receipt of jewellery in form of gifts on various occasions like birthdays, anniversaries, weddingsfestivals etc which are not considered in above working.

In view of the above facts, it is submitted that your assessee has fully explained the entire jewellery found on the date of search. It is submitted that infact your has value of Jewellery of 2002 valuation report amounting to Rs. 9,37,401 - which has not been considered at the appreciated value for the reason that the jewellery reconciled is more than the jewellery found on the date of search Accordingly, there is no question of drawing any adverse inferences invoking the provisions of section 69A of the Income Tax Act, 1961 as complete jewellery stands explained It is therefore prayed to your honor to release the jewellery of your assessee seized of Rs. 3,01,25,502/- on the date of search on the basis of arbitrary working and cooperate with your assessee."

3. Whereas the AO was not satisfied with the explanations, as the assessee has failed to reconcile the jewellery and sources of acquisition and dealt on the chart placed at page 18 to 21 of the order. The A.O also dealt on the purchase invoices produced by the assessee i.e item. 78&79 are from M/s Raghukul Diamonds Private Limited Surat and the A.O has not relied on the bills submitted from this

party and invoked the provisions U/sec69A of the Act and made addition on account of unexplained jewellery of Rs.1,17,18,360/-and assessed the total income of Rs. 2,02,20,970/- and passed the order u/sec 143(3) of the Act 29.09.2021.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A) challenging addition of Rs,1,17,18,360/- made by the A.O. In the appellate proceedings, the assessee has filed the voluminous details in respect of the claims, whereas the CIT(A) considered the grounds of appeal, statement of facts, submissions of the assessee, findings of the AO and dealt extensively on the facts and provisions of the Act and sustained the addition to the extent of Rs.52,258/- and partly allowed the assessee appeal. Aggrieved by the CIT(A)order, the revenue has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A)has erred in deleting the addition of Rs.1,16,66,102/- under section 69A of the Act overlooking the facts and findings of the AO and the assessee could not reconcile the differential jewellery value nor could prove that the jewellery was remade from time to time. Further the CIT(A)

erred in accepting the bills in respect of purchase of jewellery from M/s Raghukul Diamonds Pvt ltd, as they are not dealing in the diamonds and the company was strike off by the MCA and the Ld.DR relied on the order of the Assessing officer.

6. Per Contra, the Ld.AR submitted that the assessee has disclosed the jewellery in the individual and Huf capacity. Further the family members also hold the jewellery and these facts are supported with the wealth tax returns. In the proceedings before the lower authorities, the assessee has substantiated with the evidences and information in respect of purchases and remade of jewellery. Further the Ld.AR substantiated the submissions with the facts sheet, judicial decisions and relied on the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. The sole disputed issue envisaged by the Ld.DR that the CIT(A) has erred in granting relief to the assessee overlooking the findings of the A.O and the provisions of the Act. Whereas the Ld.AR highlighted on the jewellery held by the assessee and the family members found in the search proceedings and the reconciliation in value and in quantity. Whereas, the A.O has not accepted the jewellery

bills in the case of Raghukul diamonds Pvt ltd as the company was not dealing in diamonds and has been struck off by the MCA. Whereas the transaction of purchase of jewellery with the company was in the financial year 2010-2011 and the payments are made through the banking channels. Subsequently, the company has been struck off as per MCA data base after AGM on 30-09-2016, which is evident from Company Master Data sheet dated 18-06-2021. Further the Ld.AR demonstrated the value of jewellery disclosed in the wealth tax returns for the A.Y.2015-16 in respect of the assessee and his family members and the valuation report of jewellery obtained in the year 2002 was filed before the lower authorities. Further the old jewellery was remade from time to time and these facts were substantiated before the appellate authorities. We found that the CIT(A) has dealt on the factual aspects, provisions of the act, holding of jewellery and the submissions of the assessee. At this juncture, we consider it appropriate to refer to the findings of the CIT(A) in granting relief to the assessee dealt at Para 4.3 to 4.3.1 of the order read as under:

“4.3 I have considered the submissions of the appellant as also the material on record.

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a. The appellant has submitted that the purchase of jewellery has been made through banking channels Besides, the appellant has received jewellery in the form of gifts on various occasions like birthdays, anniversaries, festivals, weddings etc.

b. As regards the itemwise discrepancy it is noted that several of the jewellery for which bills are available with the appellant were not actually found during the course of search The appellant has given a detailed working of such items which account for 518.22 gms of Gold and 146.55 ctsof diamonds.

The appellant has laid emphasis on the fact that such jewellery is converted to new jewellery or refurbished or remade from time-to-time.

As regards the purchases made from M/s. Raghukul Diamonds PLtd., it is een that these purchase bills are dated 02.04.2010 and 03.04.2010 and payments are made through banking channels. This company has been struck off subsequently and the date of last AGM is 30.09.2016 as per MCA database. The arrest of Shri Sanjay Jain is seen to have been made much later in 2017. Given this actual background this cannot be the basis for discrediting the purchase made in 2010, without any concrete evidence. A suspicion howsoever strong cannot partake the character of proof

e The appellant has filed details of various purchases and has explained that with bulk of the items being reconciled on one-to-one basis, the benefit of unreconciled items should be given in as much as the items purchased earlier had been converted or remade into new jewellery.

4.3.1 I find that the explanation offered by the appellant is reasonable. It is a fact that out of total jewellery of Rs. 8,43,67,583/-, the appellant has been able to reconcile itemwise jewellery or gave sufficient explanation to the extent of Rs.

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7,26,49,223/- L.e. about 7/8ths of the total jewellery. Hence the appellant's contention to explain the remaining jewellery by way of remade items does not have force as against the addition of Rs. 1,17,18,360/- made by the AO, consisting of 538.09 gms of gold and 89.17 cts of diamonds, the appellant has given explanation for 518.22 gms. of gold and 146.55 cts of diamonds. Hence, in my view the addition cannot be sustained. However, as regards gold, the appellant has not been able to explain the difference of 19.87 gms. Hence, addition to this extent stands confirmed. Applying the rate of Gold @ Rs. 2,630/- per gram as per the Valuation Report on the date of search, addition of Rs. 52,258/- is sustained while addition of Rs 1,16,66,102/- stands deleted.”

8. Further the Ld. AR has relied on the decision Honble High Court Of Bombay Mrs. Komal Wazir Vs DCIT (2015)(230 Taxman563) on the explanations of sources of jewellery including gifts received on the occasion of marriage from the family members. The Ld. AR also substantiated the income offered by the assessee and his family members for the A.Y 2013-14 to A.Y.2019-2020 to substantiate the holding of jewellery and networth. Whereas the CIT(A) has considered the facts, submissions and information and has sustained the addition to the extent of Rs.52,258/- and passed a conclusive and reasoned order. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent evidence or information to take a different view. Accordingly, we do not

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find any infirmity in the order of the CIT(A) on the disputed issue and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22.12.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22.12.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai.