IN THE INCOME-TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER

AND

SHRI S RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 531/MUM/2024 (A.Y. 2012-13)

Sureshchandra Seksaria HUF 5th Floor, Seksaria Chambers 139 Nagindas Master Road Fort, Mumbai-400001	*v.*	ITO, Ward 17(3)(4) Room No. 130, 1st Floor Kautilya Bhavan C-41 to C-43, G-Block, Bandra Kurla Complex Bandra (E), Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAHS3873B		
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Ms. Dipika Agarwal**
Department Represented by	**:**	**Shri. R. R. Makwana**
Date of Conclusion of Hearing	**:**	**20.03.2024**
Date of Pronouncement	**:**	**22.03.2024**

आदेश / O R D E R

PER S RIFAUR RAHMAN [AM]:-

1. The appeal filed by the assessee emanates from the order dated 17.01.2021 passed under section 250 of Income-tax Act [for short, "the Act"] by the learned Additional Commissioner of Income-tax, Mumbai-28

[for short, "the CIT(A)"] for the assessment was A.Y. 2012-13. The Ld.CIT(A) has sustained addition of ₹.13,73,563/- made u/s 69 of the Act by the Income Tax Officer, Ward 17(3)(4), Mumbai [for short, "the AO"].

2. The grounds of appeal of the appellant is reproduced hereunder:

> *"**I. PURCHASE OF DIAMONDS OF Rs. 13,73,563 TREATED AS DEEMED INCOME CONSIDERING THE PURCHASE AS UNEXPLAINED INVESTMENT UNDER SECTION 69 OF THE INCOME TAX ACT, 1961,***
>
> *1.1 On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) (herein referred to as 'CIT(A)'] erred in confirming the addition of Rs. 13,73,563 made by the Assessing Officer u/s. 69 as unexplained investment in respect of diamonds purchased from M/S Keshav Impex even though the same were duly recorded as investment in the books of account on the ground that the purchase is a mere accommodation entry without physical delivery.*
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> *1.2 In doing so, the learned CIT(A) has further erred in ignoring the submissions made by the appellant and the order of the Appellate Tribunal on similar issue in the case of the Karta of the appellant HUF - Suresh Seksaria for AY 2011-12 which were e-filed by the appellant on 9th October, 2023.*
>
> *1.3 The appellant prays that the addition of Rs. 13,73,563 to be deleted.*
>
> ***II LEVY OF INTEREST U/S 234A Rs. 3,352***
>
> *2.1 On the facts and circumstances of the case and in law, the learned CIT(A) erred in failing to decide on the ground for incorrect levy of interest u/s 234A despite detailed submissions made by the appellant during the appellate proceedings.*
>
> *2.2 In doing so, the learned CIT(A) failed to appreciate the fact that the return of income was filed before the due date prescribed u/s 139(1) and there was no delay in filing the return of income*

and accordingly, the question of levy of interest under section 234A did not arise.

2.3 The appellant prays that levy of interest u/s. 234A of Rs. 3,352 be deleted."

3. The facts of the case in brief are that the return of income for A.Y.2012-13 was filed by the assessee/appellant on 23.07.2012 declaring total income of ₹.1,35,800/-. Subsequently, information was received by the Assessing Officer from Income-tax Officer, Ward-1(1)(4), Surat that the assessee made transactions with Shri. Anil Chokara [Proprietor of M/s. Keshav Impex], during the previous year relevant to the A.Y. 2012-13. The business activity of M/s. Keshav Impex was stated to be not genuine. The case was thereafter reopened u/s 147 of the Act after recording reasons for reopening and notice u/s.148 of the Act was issued and duly served on the assessee. In response thereto, the assessee filed return on 03.05.2019 for the subject assessment year declaring the same income i.e. ₹ 1,35,800/-. During the reassessment proceedings, the assessee filed objection against the reasons for reopening which was rejected by the AO by passing an order of 17.10.2019. After hearing the assessee, the AO passed order u/s 143(3) r.w.s. 147 of the Act on 17.12.2019, determining total income at ₹.15,78,040/- by making additions of

₹13,73,563/- u/s 69 on account of purchase from the said party and ₹68,678/- u/s 69C of the Act as notional commission.

4. In the reassessment proceedings, the assessee submitted that it is engaged in the business of bill discounting and profit from such businesses is duly disclosed in the return of income. It was also stated that the appellant is not engaged in the business of manufacturing or trading in diamonds or any activity relating to such businesses. The assessee HUF purchased jewellery from M/s Keshav Impex and paid for the same by account payee cheque. It was also submitted that M/s.Keshav Impex has issued invoices in support of impugned purchase; the jewelleries have been duly reflected in the balance sheet of the assessee as investment and the assessee has not claimed any expenses in respect of the aforesaid purchase. It is also submitted that the appellant had paid wealth-tax on the value of the said jewellaries. In support of the contentions, the assessee submitted copies of the return of income, wealth-tax return, invoices, bank statement and balance sheet. Further, it was submitted that the provisions of section 68, 69, 69A, 69B and 69C do not apply to the case of the assessee. After receipt of the replies as above, the AO asked the assessee to produce Shri. Anil

Chokara, proprietor of M/s Keshav Impex. In reply thereto, the assessee stated that more than 8 years have passed since the impugned transaction and the assessee did not have any further dealings with the said party. Hence, it was not possible to produce him before the AO. Since documentary evidences to prove genuineness of the purchase have been produced and proper explanation has been given, the case of the assessee should be accepted. However, the contention of the assessee and explanation of the assessee was not accepted by the AO on the ground that the assessee has failed to establish the genuineness of the purchases shown to have been made from M/s. Keshav Impex. The AO was of the view that the assessee has taken accommodation entry for the purchase of the diamond from M/s. Keshav Impex and no physical diamond was received by the assessee. The assessee made payment through banking channel and received back the cash after deduction of certain percentage towards commission. Hence, amount of ₹.13,73,563 was added to the total income of the assessee u/s 69 of the Act. The AO also added 5% of the amount of ₹.13,73,563/-, being ₹.68,678/-, as unexplained commission expenses u/s 69C of the Act.

5. The assessee preferred appeal before the Ld. CIT(A) against the above additions. In the order passed u/s 250 of the Act, the Ld. CIT(A) has sustained the addition of ₹.13,73,563/- and deleted the addition of ₹.68,678/- made u/s 69C by observing that the said action of the AO is not based on any factual evidence and it is based on mere assumption. Regarding the addition of ₹.13,73,563/-, Ld. CIT(A) has observed that the AO has to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Mere leading of evidence that the transaction was genuine, cannot be conclusive. Genuineness of the transaction can be rejected even if the assessee leads evidence which is not trustworthy, even if the department does not lead any evidence on such issue. The Ld. CIT(A) held that the explanation offered by the appellant is not acceptable on the back ground of information available with the AO. Therefore, the contention of the assessee that purchases of diamond of ₹.13,73,563/- is a genuine business transaction was rejected.

6. Aggrieved with the above order, assessee preferred an appeal before us.

7. At the time of hearing before us, the Ld. AR submitted that the Ld.CIT(A) has erred in confirming the addition u/s 69 of the Act with respect to the investment made by the assessee in diamond. He has reiterated the submissions made before the lower authority. The Ld. AR brought to our notice the fact that the assessee has not claimed any expenditure in its books of account in respect of the impugned purchases and disclosed the above transactions in its financial statements. Ld. AR has filed paper book and relied on the various judicial decisions which allowed relief on similar ground. He has also relied on the decision of the ITAT, Mumbai in case of Shri. Suresh Saksaria, Karta of HUF, that is, in the case of assessee itself, where addition of similar nature for A.Y. 2011-12 was deleted by the ITAT.

8. The Ld. DR, on the other hand, supported the order of the Ld.CIT(A).

9. We have considered the rival submissions and perused the materials on record. We have also gone through the decision relied upon by the Ld. AR. We find that similar issue arose for consideration before the ITAT in the case of the Karta of the assessee HUF in ITA No. 1578/Mum/2021 for A.Y. 2011-12, wherein the ITAT has allowed the

appeal of the Karta. Findings are given in Paragraphs 6, 7 and 8 of the ITAT order referred above. The same is reproduced hereunder for ready reference and clarity.

> *"6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR that the CIT(A) erred in confirming the addition u/s 69 of the Act in respect of the investments in diamonds and estimated commission expense @2%. The submitted Ld.AR that the assessee has purchased the diamonds in the F.Y.2010-11 and referred to the balance sheet placed at page 3&4 of the paper book where the assessee has disclosed the jewellery addition of Rs. 9,84,750/-. The Ld.AR demonstrated the copy of wealth tax return filed at page 11 to 13 of the paper book in particular statement of net wealth-jewellery disclosure. The Ld.AR relied on the valuation certificate from the Government Authorized Valuer certificate at page 16 of the paper book. The Ld. AR submitted that the assessee has made investments in jewellary and the payments are made through banking channel and cannot be disputed. Further the addition made by the AO u/s 69 of the Act does not apply to the assessee. Whereas, the provisions of Sec.69 of the Act can be invoked when the assessee is found to be owner of any investments which are not recorded in the books of accounts.*
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> *7. In the present case, the assessee has invested in the diamonds and which are recorded in the books of accounts and reflected in the Balance sheet. We considering the submissions, and the information demonstrated find the submissions of the Ld.AR are realistic. The assessee has not claimed the expenditure in the profit & Loss account but is disclosed in the Balance sheet.*
>
> *8. We considered the facts, provisions of the Act and the transactions that the assessee has made investments in the diamonds through the banking channel and was reflected in the balance sheet which cannot be ruled out. Further the assessee has filed the wealth tax return and valuation report including the value of jewellery certified by the Govt Authorized Valuer. Prima-facie we find the action of the A.O. applying the provisions of section 69 of the Act cannot be tenable. Accordingly, we set aside the order of the CIT(A) on this disputed issue and direct the AO to delete the addition. Since we have deleted the addition made u/s 69 of the Act and estimating commission expense will not survive and is deleted."*

10. The facts of the present case are similar to the facts of the case relied upon by the assessee. The investment in diamonds is through banking channel, which is duly supported by the bank statement given by the assessee in the paper book at Page No. 13. It is also reflected in the balance sheet filed with the return of income and wealth-tax records. Thus, once the investment has been shown in books and the source of the investment are also from the books, then no addition u/s.69 can be made. In view of the above facts and for the reasons given by the ITAT in the case of the Karta of the assessee HUF cited (supra), we set aside the order of Ld. CIT(A) on the subject of the issue and direct the AO to delete the addition.

11. The next issue is levy interest u/s 234A of the Act. The Ld. CIT(A) has not decided the issue. The Appellant has filed its return of income on 24.07.2012, which is within due date prescribed u/s 139(1) of the Act. Interest u/s 234A of the Act can be levied for defaults in furnishing the return of income by assessee. If the assessee furnishes the return of income after the due date, he is liable to pay simple interest for every month or part of the month comprised in the period commencing on the date immediately following the due date. However, in the present case,

the assessee has filed the return before the due date and hence, it was not liable to pay interest u/s 234A of the Act. We, therefore, direct the AO to delete the interest levied u/s 234A of the Act.

12. In the result, appeal filed by the assessee is allowed.

Order Pronounced in the Open Court on 22nd March, 2024

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 22.03.2024
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum