

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI BR BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.3718/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

Rohit Vinay Gupta Flat No. 9, 4 th Floor Court View, 126 Maharshi Karve Road, Churchgate, Mumbai- 400020.	बनाम/ Vs.	ACIT, CC-3(2) Mumbai.
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आयकर अपील सं/ I.T.A. No.4341/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

DCIT, Central Circle-3(2) 19 th Floor, R. No.1913, Air India Building, Nariman Point, Mumbai-400021.	बनाम/ Vs.	Rohit Vinay Gupta Flat No. 9, 4 th Floor Court View, 126 Maharshi Karve Road, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPG7828H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mani & Prateek Jain
Revenue by:	Smt Sanyogita Nagpal (CIT- DR)

सुनवाई की तारीख / Date of Hearing: 13/03/2024

घोषणा की तारीख /Date of Pronouncement: 12/04/2024

आदेश / ORDER

PER BENCH:

These are cross appeals filed by the assessee and the department against the order of the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai dated 25.09.2023 for the assessment year 2018-19.

2. The grounds of appeal raised by the assessee are as under: -

“1. On the facts and circumstances of the Appellant's case and in law, the Ld. CIT(A) erred in confirming the action of Ld. AO in rejecting the valuation report of year 2016 for the purpose of



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reconciling the jewellery seized by the department during the course of search, for the reasons mentioned in the impugned order or otherwise.

2. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of Ld. AO in not allowing the credit of diamond jewellery received as gift by the appellant and his family members which was duly explained in the statement recorded during the search action for the reasons mentioned in the impugned order or otherwise.

3. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of Ld. AO erred in making the addition of Rs. 31,77,000/- being cash found and seized at the premises of the appellant during the course of search proceedings by invoking the provisions of section 69A of the Act, for the reasons mentioned in the impugned order or otherwise.”

3. The grounds of appeal raised by the revenue are as under: -

“i. “On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing the AO to set off Gold and Diamond Jewellery on the “Will” left behind by Mrs. Shilavanti Gupta and Mrs. Taradevi even though such “Will” are not probated and are on a plain piece of paper without being on stamp paper”

ii. “On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing for reconciliation of diamond jewellery on gross carat basis and relying on the decision in the



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case of Raj Kumar Saraogi in ITA No. 1776/Kol/2012, when the facts of the case are not identical”

iii. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing the AO to allow the set off of the jewellery purchased through banking channels, which is an afterthought of the assessee and also dates of purchase and the dates of payments in the bank account are not matching”

4. Ground no. 1 & 2 of the assessee and all three (3) grounds of the revenue are related to the Jewellery/Diamond seized from the assessee’s premises.

5. Brief facts relating to the aforesaid grounds are that the assessee is an individual and is a director in M/s. Samihka Impex Pvt. Ltd., (hereinafter “M/s. Samihka Impex”) and M/s. Super Ready Steel Co. Pvt. Ltd. (hereinafter “the M/s. Super Ready Steel Company”) and also, he earns salary income from M/s. Spectra Auto. The assessee filed his original return of income on 14.03.018 declaring total income at Rs.2,43,430/-. A search action u/s 132 of the Income Tax Act, 1961 (hereinafter “the Act”) was carried on the Viraj Group on 13.07.2017 wherein the assessee’s premise was also covered. During the search action, jewellery amounting to Rs.3,32,62,104/- was found; and out of which jewellery amounting to Rs.2,96,91,759/- was seized from the residence and bank lockers of the assessee & his family members. Also, cash amounting to Rs.31,77,000/- was also seized from the premises of the assessee. The break-up of jewellery seized from the residence as well as three (3) lockers are as under: -



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Particulars	Amount (Rs.)
Residence	61,81,864/-
Locker no. GD 00763, PNB, Fort Branch, Mumbai belonging to the appellant and his mother Mrs. Poonam Gupta	1,25,99,487/-
Locker no. 180, Kotak Mahindra Bank, Churchgate Branch, Mumbai belonging to appellant's wife Mrs Charu Gupta	1,00,60,850/-
Locker no. 326A, Bank of India, Churchgate Branch, Mumbai belonging to the appellant and his wife Mrs. Charu Gupta	8,49,537/-
Total Rs	2,96,91,759/-

6. The assessee was confronted by the search team to disclose the source of purchases of the jewellery, and it would be gainful to refer to the question and answer, which was recorded by the search team u/s 132(4) of the Act, which is reproduced as under: -

“Q. 39 Please explain the source of purchases of all the jewellery items as mentioned in question no. 37.

Ans. Sir, I would like to state that most of the jewellery which I, along with my family members own today was inherited by my mother from her mother in law, husband and other ancestors. In addition, I also inherited some jewellery from my father. Apart from this some of the jewellery has been purchased by me, my wife and my mother in last few years. Further, my wife had received some jewellery from her parents on our marriage.”

7. It is noted that the assessee stays along with his wife Smt. Charu Gupta and mother Smt. Poonam Gupta. The assessee, during assessment proceedings brought to the notice of AO the following relevant events to explain the source of Jewellery i.e. his wife Smt. Charu Gupta had filed her last Wealth Tax Return for AY. 1999-2000 [As per the Valuation Report dated 08.02.2000 in which jewellery were valued and mentioned therein] (hereinafter termed as “the first



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Valuation Report). Thereafter, on 30.11.2000 Smt. Charu Gupta gifted the jewellery to her family members (details were brought to the notice of the AO). And thereafter, a new Valuation Report dated 18.04.2002 was prepared (hereinafter “the Second Valuation Report”). And on the strength of Second Valuation Report, the assessee as well as his family members were not required to pay any wealth tax [as per the provision of Wealth Tax Act, 1957]. It was also brought to the notice of the AO that Smt Taradevi R. Aggarwal [*sister-in-law of Shri Wadhawaram Gupta, Grand Father of assessee*] had bequeathed all her gold ornaments and jewellery to Smt. Poonam Vinay Gupta [*mother of assessee and daughter-in-law of Shri. Wadhawaram Gupta*] as per her last ‘will’ dated 20.05.1998 (copy of ‘will’ found placed at page no. 68 & 69 of PB); and Smt Shilavanti Gupta (wife of Shri Wadhawaram Gupta) bequeathed all her all her silver utensils, gold ornaments and jewellery to her daughter-in-law Smt. Poonam Vinay Gupta (*mother of assessee*) by her ‘will’ dated 02.11.1997 [Refer copy of ‘will’ placed page no. 70 & 71 of PB]. And that both donors died in 1998 & 1997 respectively. And the assessee also filed the details of bill (re-making) in order to show that most of the jewelries were re-made (*latest trend/fashion*); and other purchase bills of various new jewelry purchased as well as the Valuation Report dated 10.08.2016 (hereinafter “third Valuation Report”). The assessee also filed before AO the re-conciliation of the second Valuation Report of 2002 as well as the re-make ornaments along with jewellery purchased to explain the quantity of jewellery seized during search. The re-conciliation



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according to assessee matched the jewellery item wise found during the course of search operation. And along with it, assessee also filed the first to third (1st) to (3rd) Valuation Reports stated (supra) before the AO. However, the AO disbelieved the third Valuation Report of 2016 and both 'Wills' i.e the 'will' of Smt. Taradevi R. Aggarwal and Smt. Shilavanti Gupta (supra). And according to the AO, the bill of re-make jewellery are fabricated evidences and therefore, he rejected the same. And the AO held "*From the above Re-conciliation, the seized gold jewellery amounting to Rs.41,36,818/- & Diamond Jewellery amounting to Rs.1,51,01,692/- aggregating to Rs.1,92,38,510/- is not reconciled and therefore treated as unexplained investment of the assessee and added to the income u/s 69A of the Act*". Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who gave partial relief to the assessee by holding as under:-

"8.5 I have considered the submission of the assessee and contention of the AO. It is understood that the assessee is residing as a joint family along with his wife Mrs. Charu Gupta and mother Mrs. Poonam Gupta. During the course of search, jewellery was found from the residential premises as well as individual locker belonging to various family members of the assessee. The jewellery included the gold jewellery and diamond jewellery and was valued at Rs. 3,32,62,104/-. Out of the same, jewellery amounting to Rs. 2,96,91,759/- was seized by the search officials. The break-up of the location wise jewellery seized is as under:



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Particulars	Amount (Rs.)
Residence	61,81,864/-
Locker no. GD 00763, PNB, Fort Branch, Mumbai belonging to the appellant and his mother Mrs. Poonam Gupta	1,25,99,487/-
Locker no. 180, Kotak Mahindra Bank, Churchgate Branch, Mumbai belonging to appellant's wife Mrs Charu Gupta	1,00,60,850/-
Locker no. 326A, Bank of India, Churchgate Branch, Mumbai belonging to the appellant and his wife Mrs. Charu Gupta	8,49,537/-
Total	2,96,91,759/-

8.6 In his statement recorded during the search u/s 132(4), the assessee explained the source of the jewellery as under: -

“Q.39 Please explain the source of purchases of all the jewellery items as mentioned in question no. 37.

Ans. Sir, I would like to state that most of the jewellery which I, along with my family members own today are inherited by my mother from her mother in law, husband and other ancestors. In addition, I also inherited some jewellery from my father. Apart from this some of the jewellery has been purchased by me, my wife and my mother in last few years. Further, my wife has received some jewellery from her parents on our marriage.”

8.7 On perusal of the above statement, it is observed that the assessee has explained that most of the jewellery was received on account of inheritance by his mother from mother in law, father and other ancestors. Further, he had also explained that some jewellery was purchased and received by his wife on marriage He also relied upon the valuation report prepared in year 2002 to explain the jewellery.

8.8 Now, during the assessment proceedings, assessee has relied upon a valuation report dated 10.08.2016 prepared by registered valuer and has reconciled the jewellery seized during the course



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of search. The copy of the same has also been submitted before me. The assessee has tried to explain that the said report contains the jewellery which was reflected' in the valuation report of Year 2002, inherited jewellery, Jewellery purchased after the said valuation report, jewellery received as gift and jewellery remand. In the assessment order, the AO has observed that the said valuation report was never brought to the notice of the search officials or investigation wing post search. Having considered the facts, I agree with the AO that the said valuation was never mentioned by the assessee before the search officials. The valuation report was made on 10.08.2016 whereas the search action was conducted on 13.07.2017. When the assessee has submitted the earlier valuation report of year 2002, there was no occasion for the assessee to not submit the latest valuation report. It is therefore, clear that the valuation report dated 10.08.2016 is an afterthought and cannot be relied upon. Therefore, the contention of the assessee that the jewellery is fully explained through report dated 10.08.2016 is rejected.

8.9 Now coming to the alternate contention of the assessee, it has been stated that the valuation report of year 2002 has been duly accepted by the AO. However, the reconciliation made by the AO is not proper. It has been stated that the fact of inheritance was duly explained by the assessee during the search. While reconciling the jewellery, the valuation report of late mother in law of the mother of the assessee Mrs. Shilavanti Gupta and late sister in law of the mother of the assessee Mrs. Taradevi has not been considered by the AO. Further, with respect to reconciliation of diamond jewellery, it has been submitted that due to habit of wearing jewellery having different



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combination i.e. some part of one set may be mixed with another set and therefore, item to item reconciliation could not be possible. Also, it has been explained that performing the valuation at the time of search, the jewellery were not bifurcated the jewellery as per their original set and valuation were taken by mixing the various jewellery in an uneven way or by clubbing different jewellery as per their own will. Also, the jewellery have been remade. Therefore, it has been submitted that the item to item reconciliation of diamond jewellery is not possible and therefore, the reconciliation should be done on gross weight basis. Further, it has also been requested to provide credit for the jewellery which has been purchased and received on gifts. The correct gross weight of the diamond jewellery has also been explained stating certain totaling errors. Considering the above, the appellant has submitted that the jewellery is explained. The reconciliation submitted is reproduced hereunder: -

Reconciliation of Gold Jewellery		
Gold quantity as per valuation report of 2002 considered by AO in order		
Charu Gupta	978.40	
Shivani Gupta	1400.50	
Rohit Gupta	183.80	
Poonam Gupta	592.70	
Vinay Gupta HUF	395.50	
Total	3550.90	
Gold quantity as per valuation report of 2002 not considered by AO		
Shilavanti Gupta, mother in law of mother of the appellant as per valuation report of 2002	2058.20	
Taradevi, sister in law of the mother of the appellant	Nil	
Total	2058.20	
Grand total of gold jewellery	5609.10	5609.10
Gold quantity seized during the search		5107.95
Excess Gold jewellery with the family members		501.15

Reconciliation of Diamond Jewellery		
Diamond carats as per valuation		



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report of 2002 considered by AO in order		
Charu Gupta	12.07	
Shivani Gupta	26.43	
Rohit Gupta	32.24	
Poonam Gupta	47.95	
Vinay Gupta HUF	47.65	
Total (A)	166.34	
Diamonds carats as per valuation report of 2002 not considered by AO		
Shilavanti Gupta, mother in law of mother of the appellant as per valuation report of 2002	15.75	
Taradevi, sister in law of the mother of the appellant	36.55	
Total (B)	52.30	
Add: Purchases made by Charu Gupta after 2002 (C)	61.90	
Add: Gift received by family members till 2016 (D)	27.30	
Total of diamond carats as per 2016 report (E= A+B+C+D)	307.84	
Add; Gifts received by family members after 2016 report till search action (F)	19.72	
Grand total of diamond carats with the family members (G=E+F)	327.57	
Diamonds quantity seized during the search (H)*		327.57
Corrected quantity as per assessee		
Excess diamond carats (I=G-H)		Nil

8.10 I have gone through the explanation and reconciliation provided by the assessee. I find that there is no dispute that AO has accepted the valuation report of year 2002 prepared by registered valuer Mahendra K Zaveri dated 09.02.2002 and 18.04.2002 in the case of family members i.e. Rohit Gupta, Charu Gupta, Poonam Gupta, Shivani Gupta and Vinay Gupta HUF and has in-fact reconciled the jewellery from the said



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valuation reports. It is noted that the valuation report of Mrs. Shilavanti Gupta and Mrs. Taradevi are also prepared by the same valuer on the same day i.e. 09.02.2002. I also find that the contention of inheritance was duly taken by the assessee during the course of search. He had also explained that wealth tax for family members were not filed since the same did not exceed the taxable limit. It is also noted that the inheritance of assessee's father through Vinay Gupta HUF has been duly accepted by the AO. I also find that the assessee has submitted the will of Mrs. Shilavanti Gupta and Mrs. Taradevi. Therefore, I find no reason to reject the credit of the inheritance of the jewellery mentioned in the valuation reports of Mrs. Shilavanti Gupta and Mrs. Taradevi. Accordingly, the gold jewellery and diamond jewellery as per the valuation report is directed to be allowed to be set off against the jewellery found during the search.

8.11 Further, regarding the reconciliation of the diamonds jewellery on the basis of weight, I agree 'with the contention of the assessee that the jewellery are often remade and often sets of jewellery are interchange while wearing. It is quite possible that while making the valuation report, the said interchanged sets are taken into account which would not match with the earlier valuation report. Therefore, the reconciliation on the basis of gross weight is justifiable. In this regard, I find that similar position has been upheld by the Tribunal in the case of Raj Kumar Saraogi in ITA No. 1776/Kol/2012 dated 01.09.2015. The relevant portion of the order is reproduced hereunder:

“6. We have considered the submissions of both the parties. Ld. CIT(A) has observed that gold jewellery of gross weight 7277.080 grams (net weight: 6374.056-1005.010 carats of



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diamonds was duly explained in the hands of assessee and his family members. Further, assessee surrendered gold jewellery of gross weight 3164.160 (net weight 2495.62 gms) and 199.670 carats of diamond in course of search. Consequently, gold jewellery of gross weight 10441.240 gms (net weight 8869.718 gms) and 1204.680 carat of diamond was explained in the hands of assessee and his Family members which is not disputed. On the other hand, gold jewellery of Gross weight 8905.410 grams (net weight 7655.910 gms) and 968.230 carats of diamond was found at the time of search. These basic details are not disputed/controverted in any manner by the Department. The only dispute was that assessee was not being able to reconcile item-wise jewellery which were found at the time of search vis-a-vis the wealth tax and purchases made during the financial year by assessee. In this regard, we are in agreement with the findings of Ld. CIT(A) that items of jewellery are often subjected to remaking on account of changing fashion and designs. In Indian society, the yellow metal and diamond has assumed lot of significance for ladies which is a status symbol and they buy it or convert the jewellery as per the prevailing fashion. There has no gainsaying that fashion keeps on changing and, accordingly, the jewellery is re-modeled from time to time according to the prevailing fashion. Under the facts and circumstances, comparison with the items of jewellery found at the time of search with wealth tax return, which were filed much earlier was putting an onerous task on assessee to prove something impossible, and assessee cannot be as bed to prove something which is beyond its control. We, accordingly, confirm the order of Ld. CIT(A) and this issue of Revenue's appeals are dismissed."

In view of the above, I allow the reconciliation of diamond jewellery on gross carat basis.



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8.12 Further, the assessee has taken the plea that the jewellery purchased through proper banking channel was also forming part of the seized jewellery which were purchased after the year 2002. I find that AO has provided no explanation to deny the credit of the jewellery purchased in the assessment order. It is also noted that the fact of purchase of jewellery purchased in the statement recorded during the search and bills in support of the same have also been submitted by the assessee. The details of the relevant purchase bills are as under:

Bill Date	Date	Bill Amount Rs.)
HPR-07/2011-2012	20.01.2012	7,90,763
HPR-08/2011-2012	21.01.2012	1,15,244
HPR-169/2011-2012	10.04.2013	7,56,163
HPR-286/2011-2012	08.03.2014	16,37,518
Total		32,99,688

8.12.1 Accordingly, I direct AO to verify the payment details of the aforesaid purchase bills and to allow the jewellery purchased through proper banking channels to be set off against the jewellery found during the search.

8.13 Further, the assessee has taken the plea that the remaining diamond jewellery aggregating to 47.02 carats pertains to the gifts received by the family members over the period of time. It has been stated that it is a general practice wherein jewellery are gifted to family and friends on various occasions and also often remade and purchased which Bose recognized, by the CBDT Instruction No. 1916 dated 11.05.1994 where they gave powers to the department of taking-into account the status of the family customs and practices of the community to which the family belongs. I have Considered 'the submission of the assessee. I find that the appellant has not submitted evidence to support the above argument. No gift deeds or details of the donors has been



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furnished. Accordingly, the above argument of the assessee is rejected.

8.14 Further, it has been explained by the assessee that there is a totaling error while aggregating the gross carats of the diamond jewellery in the valuation report which is apparent. The corrected total carats as per the assessee come to 327.57 carats. It has been also explained that individual total of the carats taken by the AO in the assessment order also aggregates to 327.57 carats. The said contention of the assessee has been perused. The AO is directed to verify the said claim of the assessee and adopt the correct weight of diamond.

8.15 Accordingly, grounds no. 1 to 3 are partly allowed.”

8. Aggrieved by the aforesaid action of the Ld.CIT(A), the revenue as well as the assessee is before us.

9. The department has raised three (3) grounds (supra) against the Ld. CIT(A)'s direction to the AO to verify the payments made by the assessee as noted by him at Para No. 8.12.1 of his assessment order and to allow the jewellery purchased through proper banking channels to be set off against the jewellery found during the search. Whereas, the assessee is aggrieved by the action of the Ld. CIT(A) in not allowing the diamond jewellery received as gifted by the assessee and his family members of 47.02 Cts (27.30 Cts + 19.72 Cts) (Refer Page No. 24 of PB).

10. We have heard both the parties and perused the records. We note that search action u/s 132 of the Act took place at Viraj Group on



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13.07.2017 wherein the assessee's premises was also covered. And during the course of search proceedings, jewellery amounting to Rs.3,32,62,104/- was found at the premises of the assessee and he was confronted with the jewellery found; and his statement was recorded u/s 132(4) of the Act, wherein the assessee stated that most of the jewellery found were inherited from his ancestors. And the remaining jewellery has been purchased in the last few years as well as received as gift during marriage etc. Having recorded the statements of family members, the search team seized jewellery amounting to Rs.2,96,91,759/-.

11. Pursuant to the direction of AO to explain the source of jewellery seized from his premises, the assessee based on the valuation report dated 10.08.2016 (3rd Valuation Report) filed the reconciliation of the Gold and Diamond jewellery held by him and his family members. However, AO disbelieved the valuation report of 2016 (3rd Valuation Report) which according to him, was an afterthought and prepared back-dated after search because assessee didn't mentioned about such a report, when his statement was recorded u/s 132(4) of the Act. Therefore, the assessee reconciled the jewellery on the basis of 2nd Valuation Report i.e. 2002 valuation report dated 18.04.2002 of jewellery belonging to the assessee and his family members. The AO partly accepted the reconciliation of jewellery, but he rejected the claim of the assessee regarding the jewellery inherited by him as well as his family members and disbelieved claim of the jewellery purchased/gifted to the assessee and his family, as shown below: -



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Particulars of Jewellery	Jewellery seized at the assessee premise (A)	Jewellery allowed on the basis of valuation report of 2002 (B)	Excess Jewellery disallowed (A-B)	Amount of excess Jewellery disallowed
Gold (Gms)	5107.95	3550.90	1557.05	41,36,818/-
Diamond(carats)	327.57	166.34	161.23	1,51,01,962/-
			Total	1,92,38,510/-

12. Thus, AO made an addition of Gold jewellery amounting to Rs.41,36,818/- and Diamond jewellery amounting to Rs.1,51,01,962/-, aggregating to Rs.1,92,38,510/-. On appeal, the Ld. CIT(A) though rejected the 3rd Valuation Report of jewellery (i.e. of year 2016), allowed the credit of inheritance and purchases by the assessee through banking channels and also allowed the credit of diamond jewellery carat-wise. However, Ld. CIT(A) rejected the claim of gift of jewellery as received by the assessee. Therefore, both the assessee and revenue have preferred cross appeals before us.

13. From perusal of evidence placed on record, we note that Smt. Charu Gupta [*wife of assessee*] had received certain jewellery on account of her marriage and the same was duly disclosed in her wealth tax return filed for AY 1999-2000 which disclosed the jewellery amounting to Rs.49,28,300/- as per the first valuation report dated 08.02.2000 which consists of 2958.20 grams of gold and 118.39 carats of diamond jewellery.

14. We note that the assessee, during the course of assessment/appellate proceedings, had submitted reconciliation of jewellery seized on the basis of 2002 valuation report (2nd Valuation Report) which has been partly accepted by AO and fully accepted by



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Ld. CIT(A) which reconciliation explained by assessee are noted to be in 2 parts:

- a) Jewellery received on account of inheritance up-to year 2002 as well as personal jewellery held by the ladies of the family.
- b) Jewellery purchased/gifted after the year 2002 till date of search.

15. Coming to (a) Jewellery received on account of inheritance up to year 2002 and personal jewellery, it was submitted by the assessee during the search proceedings itself that almost all jewellery belongs to the assessee and his family members, and that bulk of the same has been inherited from their ancestors. The family members of the assessee and their relation with the assessee is noted as under: -

- a. Smt. Shilavanti Gupta - Grandmother of Assessee.
- b. Shri. Wadhawaram Gupta- Grandfather of Assessee.
- c. Smt. Poonam Gupta- Mother of Assessee.
- d. Smt. Charu Gupta- Wife of Assessee.
- e. Shivani Gupta- Sister of Assessee.
- f. Smt. Taradevi Aggarwal - Sister in law of Grandfather of Assessee.
- g. Vinay Gupta HUFHUF of assessee's father Mr. Vinay Gupta whose karta is now assessee after the death of his father.

16. Relevant facts which need to be noted are that the grandmother of the assessee, late Smt. Shilavati Gupta had passed away and as per her last Will dated 02.11.1997, the gold jewellery held by her was to



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be inherited by Smt. Poonam Gupta, (*mother of the assessee*) and other assets of donor were to be inherited by other family members. Copy of the Will is found placed at page no 70-71 of the paper book. It is further noted that the said will was signed in the presence of 2 unrelated independent witnesses viz Shri Prakash Thakkar & Shri Leo Marks. So, we note that the will was prepared in accordance to law; and further it is noted that the veracity of the 'Will' has not been challenged by the other beneficiaries. So, the assets were gifted to donees as per the wish of late donor, which was settled by family arrangement in the presence of all beneficiaries named in Will.

17. Similarly, it is noted that the assessee has submitted a Will of late Smt. Taradevi Aggarwal which is found placed at page nos. 68-69 of the paper book. It is noted that Smt. Taradevi Aggarwal is sister-in-law of Shri. Wadhwararam Gupta, (*grandfather of the assessee*) and later passed away. And on perusal of the contents of last will dated 20.05.1998, it is noted that Smt. Taradevi Aggarwal has also bequeathed the entire Gold jewellery and ornaments to Smt. Poonam Gupta, daughter in law of Shri. Wadhwararam Gupta who is the mother of assessee (*and the other assets were transferred to other family members*). And the said will was signed in the presence of 2 independent witnesses viz Shri Vinod Gupta & Shri Subhash Kanthi. And the assets were settled as per the will among the donees and there is no dispute among donees against the veracity of the will.



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18. And it is noted that in the presence of all the family members, the final division/distribution of the jewellery and other properties took place during the year 2002; and pursuant thereto, the item wise valuation was prepared of jewellery including diamonds, which fact is discernable from perusal of the valuation report dated 18.04.2002 (2nd Valuation Report); and consequent to such distribution of jewellery among family members, assessee and his family members were out of the net of Wealth Tax Act and therefore didn't file Wealth Tax after filing the same in AY. 1999-2000 (supra).

19. However, as taken note the AO rejected the Will of his ancestors (Smt Taradevi & Smt Shilavati Gupta) on the ground that the same were not probated. In this regard, the Ld. AR submitted that the beneficiaries didn't file for probate because there was no dispute among the family members (donees) regarding authenticity of the Will/distribution of assets named therein and the division/distribution of the assets were made strictly in accordance with the wish/will of the donors. Moreover, it was pointed out by Ld. AR that the jewellery valuation report was also made by the same valuer who had prepared the valuation of the assets of other family members including the assessee which has been accepted by the AO.

20. Further, according to Ld. AR if the AO had any doubt regarding the veracity of the Will, he should have made independent enquiry with the other family members who are shown to be benefited from the two Wills in question. However, AO failed to make any such enquiries



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and has mechanically rejected the wills of the ancestors without giving any reasons for doing so.

21. Therefore, the Ld. CIT(A) according to Ld. AR has correctly allowed the credit of the jewellery inherited from late Smt. Shilavanti Gupta and late Smt. Taradevi Agarwal, and based on which valuation report of 2002 was prepared (*after settling/distributing jewellery/diamonds as per the two wills*). And which fact was also duly corroborated by the statement of the assessee during the search u/s 132(4) of the Act and thus according to him, cannot be said to be an after-thought.

22. From the discussion (*supra*), we find that assessee's wife (Smt Charu Gupta) had filed her Wealth Tax Return for AY. 1999-2000 (*based on first Valuation Report dated 08.02.2000*) disclosing jewellery at Rs.49,28,300/- [i.e. 2958.20 grms of Gold & 118.39 carat of diamonds]. Thereafter, on 30.11.2000, Smt. Charu Gupta had gifted her jewellery to her family members including Shri. Rohit Gupta (*assessee*), Mrs. Shivani Gupta (*sister of assessee*) and Mr. Vinay Gupta HUF (*being HUF of the father of the assessee whose karta was the assessee as on date of search*) and thereafter, 2nd valuation report dated 18.04.2002 was prepared which gives the details of the jewellery held by assessee's wife Charu Gupta and other family members till year 2002 are as under:



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Name of the family member	Gold Jewellery shown as per the valuation report of 2002 (Gms)	Diamond Jewellery shown as per the valuation report of 2002 (Cts)
Vinay Gupta HUF	395.50	47.65
Rohit Gupta	183.80	32.24
Shivani Gupta	1400.50	26.43
Charu Gupta	978.40	12.07
Total	2958.2	118.39

23. Thus, we find that 1st Valuation Report and 2nd Valuation Report matches/tally i.e. gold 2958.20 gms and diamonds of 118.39 cts; And we note from the assessment order that, valuation report of year 2002 has been accepted by the AO. We find that since none of the above family members were holding jewellery in excess of wealth tax limit after 2002, no wealth tax return was filed thereafter.

24. Further, we note that Mrs. Poonam Gupta (*mother of assessee*) held certain jewellery in her personal capacity which was also inventorized by the valuer vide his second report dated 18.04.2002. This report has also been duly accepted by AO in the assessment order. Thus, we note that jewellery held by the family members in the year 2002 thus comprised of the jewellery inherited by the family members as well as jewellery held by the Mrs. Poonam Gupta and Charu Gupta and other family members. The same is tabulated as under:

Quantity as per valuation report of 2002	Gold jewellery in Grams	Diamond jewellery in carats
Charu Gupta	978.40	12.07
Shivani Gupta	1400.50	26.43
Rohit Gupta	183.80	32.24
Poonam Gupta	592.70	47.95
Vinay Gupta HUF	395.50	47.65
Shilavati Gupta	2058.20	15.75
Taradevi Agarwal	Nil	36.55
Total	5609.10	218.64



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25. Coming to the (b) Jewellery purchased/gifted after year 2002 till date of search (13.07.2017), it is noted that the assessee and family members had purchased certain diamond/jewellery after 2002 through proper banking channels aggregating to 61.90 Carats and details of the same are as under: -

Bill Details	Bill Amount	Bank Payment Date	Amount	Total
HPR-07/2011-2012 dated 20.01.2012	7,90,763	13.01.2012	6,00,000	
		01.03.2012	1,90,763	
HPR-08/2011-2012 dated 21.01.2012	1,15,244	25.01.2012	1,15,244	1,15,244
HPR-169/2011-2012 dated 10.04.2013	7,56,163	08.04.2013	7,55,000	7,55,000
HPR-286/2011-2012 dated 08.03.2014	16,37,518	07.03.2014	5,00,000	
		07.04.2014	10,00,000	
		10.09.2014	1,37,518	16,37,518

26. As noted (supra), the assessee during the search action [*in the statement recorded u/s 132(4) of the Act*] stated about purchases made of diamond/jewellery; and during the course of assessment proceedings, submitted bills to substantiate the purchase, but AO neither made any enquiry about it nor doubted about it. Therefore, the Ld. CIT(A) directed that credit be given for the above purchases made which are found to be duly corroborated by bills/bank statement. According to us, since the assessee has been able to prove the genuineness of the purchase of the aforesaid jewellery/diamonds of 61.90 carats, the Ld. CIT(A)'s has rightly directed the AO to give credit for such purchases which action of Ld. CIT(A) cannot be held to be perverse and so upheld. Consequently, we find that assessee was able to explain the diamonds purchased of 114.21 carat. Thus balance



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diamond in carat that needs to be explained by assessee was 161.23-114.21 = 47.02 carats.

27. Thus, we find that jewellery held by family members till the year 2002, and purchased thereafter are considered, we find that the gold jewellery seized stands explained in its entirety.

28. Now coming to the remaining diamond jewellery of 47.02 carats, are concerned, the Ld. AR submitted that it is a common custom/practice in the Hindu families to give valuable gifts on ceremonial occasions of marriage, festivals, child-birth, birthdays etc; and depending on the status of the persons, gifts like jewellery (*gold, silver, diamonds*) are given, which fact was stated by the assessee in his statement recorded during the search u/s 132(4) of the Act. According to Ld AR, the assessee hails from wealthy background and resides in posh locality of South Mumbai and enjoys status of upper class wealthy individuals and have shown jewellery in excess of Rs. 2.5 Crs. in their valuation report as already discussed above. So according to Ld. AR, the gifts given by relatives/friends on marriages/birthdays etc would cover the balance diamonds of 47.02 carats.

29. In this regard, it is noted that the assessee has a net capital of Rs. 4.18 Crs whereas his wife Charu Gupta has capital balance of Rs. 2.11 Crs and his mother Poonam Gupta has capital balance of Rs. 2.30 Crs, which facts are discerned from perusal of the balance-sheet found placed at page no 117-119 of paper book. These facts indicate the



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well-off financial status of the assessee's family and therefore, the gift of approx. 47 Carats valuing approx at Rs. 25 Lakhs of diamond jewellery as quantified in the impugned order of Ld. CIT(A) at para 8.9 over a period of more than 15 years [*i.e. year 2002 till date of search i.e. 2017*] is found to be a plausible explanation in the given facts of the case.

30. Before we part, we would like to deal with the submission of Ld. DR that Ld. CIT(A) erred in ignoring the exercise carried out by AO matching item-wise diamond jewellery *vis a vis* the valuation report of 2002, the Ld. AR submitted that it is common knowledge that depending on the latest trend of fashion, the ladies have a habit of exchanging or remaking the jewellery (design); and therefore, it is not practical to match item-wise diamond jewellery with the valuation report of 2002. Because of this reason, according to Ld. AR, item wise reconciliation of each and every piece of jewellery *vis a vis* valuation report of 2002, couldn't materialize. We find force in the submission of Ld. AR, that jewellery's undergo remake/exchange depending on new trends/fashion or while repairing of jewellery. The assessee had submitted the remaking bills before the AO, which has not been enquired/doubted by the AO. Accordingly, the action of AO in matching the diamond jewellery found during search in 2017, on item basis with the report of year 2002 cannot be countenanced. Having appreciated the aforesaid facts, we note that the Ld. CIT(A) has allowed set off on carat basis which view is a plausible action and so upheld.



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31. Based on the aforesaid discussion, the details of the jewellery as held by the assessee and his family members till the date of search vis-a-vis jewellery seized as shown by assessee is found to be as under:-

Name of the family member	Gold jewellery in Grams	Diamond jewellery in carats
Quantity as per valuation report of 2002		
Charu Gupta	978.40	12.07
Shivani Gupta	1400.50	26.43
Rohit Gupta	183.80	32.24
Poonam Gupta	592.70	47.95
Vinay Gupta HUF	395.50	47.65
Shilavati Gupta	2058.20	15.75
Taradevi Agarwal	Nil	36.55
Total as per 2002 report	5609.10	218.64
Add: Purchases made by Charu Gupta after 2002	-	61.90
Add: Gift received by family members from year 2002 till the date of search	-	47.02
Total jewellery p to the date of search	5609.10	327.56
Actual Jewellery seized	510.95	327.56

32. From the aforesaid chart and based on the facts and circumstances discussed (supra), we find that the jewellery seized in the search has been duly explained, and therefore, we allow assessee's ground no. 2 and dismiss the revenue's ground no. 1, 2 & 3 and also dismiss assessee's ground no. 1. Thus, we delete the addition sustained by Ld. CIT(A) on the jewellery gifted to assessee/his family.

33. Ground no. 3 of the assessee is against the action of the Ld. CIT(A) confirming the addition of Rs.31,77,000/- (*cash found at the premises of the assessee during the course of search*) u/s 69A of the Act.

34. Brief facts are that during the search in the premises of assessee, cash amounting to Rs.31,77,000/- was seized and when confronted by



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search team u/s 132(4) of the Act as to the source of the said cash, the assessee replied to question no. 35 & 36 as under: -

“Q. 35 Please explain the source of the cash amounting to Rs. 31,77,000/- found at your “residence premises.

Ans. Sir, I’m one of the three ‘Directors/shareholders in a company, M/s Super Ready Steel Company Pvt Ltd, which has factory premises at Gut No. 248, Hissa No. 2, Village Kalamgaoun, Tal-Shahpur, Dist. Thane. We have signed an MOU with M/s Pharma Air Modular Systems Pvt Ltd for the sale of this factory premises, as a security money, we have received Rs.35,00,000/- lakhs cash from M/s Pharma Air Modular Systems Pvt Ltd to execute the agreement further. Out of total amount of Rs. 35,00,000/-, amount of Rs. 30,00,000/- was received by me and rest of 5,00,000/- was kept with Mr. Supremo Singh Chadha, the another director of the company.

Q.36 Please state that when and from whom you received the cash amounting to Rs.35,00,000/- Please provide the name, communication address of the person from whom you have received the cash amount. And Sir, I have received these cash amount in two or three instalment in the month of March, 2017 to May 2017 from Shri Vinod Gupta, a Sr. employee of M/s Pharma Air Modular. Systems Pvt Ltd. Sir, I have received the said cash somewhere in restaurants at Bandra & Juhu.”

35. During the assessment proceedings, according to the AO, he issued notice to assessee as to why the cash seized should not be added in his hands, which according to AO didn’t elicit any response.



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Therefore, he added Rs.31,77,000/- u/s 69A of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and filed his submission (*Refer at page no. 85 to 89 of PB*). And the Ld. CIT(A) called for remand report from the AO and he filed the remand report dated 11.08.2023. And thereafter, the Ld. CIT(A) confirmed the action of the AO by holding as under: -

“9.4 I have considered the submission of the assessee and contention of the AO. At the outset, it is necessary to consider the issue of admission of additional evidences which has been objected by the AO. I have gone through the notice issued during the assessment proceedings. I observe that the assessee was show caused regarding the unsecured loan only towards the fag end of the assessment proceedings and was only provided two days to reply to the said notice which included details pertaining to their parties. This clearly shows that proper opportunity was not provided to the assessee during the assessment proceedings. As per Rule 46A (1), the said evidences are admissible under sub rule (d) wherein sufficient opportunity was not provided. In any case, the additional evidences are also admissible under sub rule (b) and (c) which provide admission of evidences wherein there is presence of sufficient cause. The case of the assessee falls under the above said sub rules. Accordingly, I admit the additional evidences submitted by the assessee.

9.5 On the merits, the issue relates to the explanation of the seized cash amounting to Rs. 31,77,000/-. The appellant has reiterated its stand taken during the course of search that an



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amount of Rs. 30,00,000/- pertain to the cash received in the capacity of the director on account of sale of land. In the appellate proceedings, the appellant has submitted the supporting document to the said transaction in the nature of MOUs and agreement entered by the company with the seller. I find that the assessee has merely repeated the statement given during the search. Except the above statement, the assessee as no bought on record any evidence to support its stand. The appellant has not been able to submit any proof to show that the cash was paid by the said purchaser to the said company. The so called MOU does not mention anything about cash security deposit. Also, no confirmation has been furnished by the assessee from the payer of the so called security deposit. The revised MOU has infact been prepared after the date of the search. In the absence of any reliable documentary evidence, the explanation of the assessee regarding the cash seizure to the extent of Rs. 30,00,000/- cannot be accepted.

9.6 With regard to the explanation of the seized cash with reference to the cash balance as per books of the appellant and his family members, I agree with the contention of the AO that the cash balance are not commensurate with the income and the expenditure incurred by the appellant. Accordingly, I hold that the cash seized cannot be termed as explained. Accordingly, ground no. 4 is dismissed.”

36. Aggrieved, by the aforesaid action of Ld CIT(A), the assessee is before us.



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37. We have heard both the parties and perused the records. The first question that needs to be answered is whether the statement/answer given by assessee during search u/s 132(4), wherein he explained the source of Rs 30 Lakhs can be accepted or not. We note that when the assessee's premise was searched, and cash of Rs.31,77,000/- was seized; and when confronted by search team, the assessee replied that he was one of the director of M/s. Super Ready Steel Company Pvt. Ltd. (hereinafter "M/s. Super Ready"); and that in the capacity of director, he had signed an *agreement to sell/MOU* with M/s. Pharma Air Modular Systems Pvt. Ltd (hereinafter "M/s. Pharma Air") the factory premises at Kalamgaon. of M/s. Super Ready. And pursuant to the agreement for sale /MOU, assessee had collected from M/s. Pharma Air, security money of Rs.35,00,000/- (*Rs.30,00,000/- to assessee and Rs. 5,00,000/- to another director of M/s. Super Ready Steel, Shri Supremo Singh Chadda*). And in order to prove the aforesaid averment, (*regarding agreement to sell factory premises at Kalamgaon of M/s. Super Ready*) assessee produced the agreement to sale termed as MOU (*Refer MOU dated 14.02.2017 placed at Page 107 to 109 PB executed on Rs.100 stamp-paper*), which reveals that the assessee in his capacity as director of M/s. Super Ready had executed first MOU dated 14.02.2017 with the buyer M/s. Pharma Air [*i.e. five months before search on 13.07.2017*] agreeing for sale of the factory premises *at Kalamgaon* of M/s. Super Ready Steel Company for a total sale consideration of Rs.4.30 cr., and time-line for making payments in installments have been prescribed therein at page 109 PB.



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However, the purchaser [M/s. Pharma Air] had given only part-consideration of Rs. 72 Lakhs (in cheque) before the last date for executing the sale transaction [which was fixed on 30.04.2017]. According to the Ld. AR, since the buyer couldn't fulfil its commitments, the seller [M/s. Super Ready] issued notice by speed post on 17th May, 2017 to the buyer, [*a copy of which is found placed at page no. 110 & 111 of PB*], in which the buyer was put to notice proposing termination of the agreement of sale wherein it was acknowledged that buyer had paid only Rs.72 Lakhs (as on 13.03.2017); and it was alleged therein that buyer did not make the balance payment/installment of Rs.75 Lakhs due on 15.04.2017 and other payments due as per time-line given in MOU dt 14.02.2017, therefore, notice of the termination was given to M/s. Pharma Air. Pursuant to notice of termination and forfeiture of amounts advanced, according to Ld AR, M/s Pharma Air came up with proposals to extend the time for arranging balance funds, and in order to infuse confidence and show its bonafide, had handed over Rs 35 Lakhs as security deposit through Shri Vinod Gupta, which amount (Rs 30Lakhs) was found during the search; and the assessee when confronted by search team to explain the source of it, assessee brought to their notice that out of Rs.31,77,000/-, Rs.30 Lakhs was the security-money given by the buyer of the factory premises (supra) [buyer M/s. M/s. Pharma Air]; and the balance amount of Rs.1,77,000/- was from cash balance of assessee. However, the AO made addition of the entire amount of Rs.31,77,000/-; and the assessee



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during First Appellate Proceedings reiterated the afore noted events and placed the aforesaid documents and in addition to it also filed addition documents to show further development i.e. regarding further payments made by buyer after extending the time in respect of agreement to sell; and evidences were led to show that payments were made by buyer in terms of MOU dated 14.02.2017 which was modified on 28.08.2017 (second MOU) i.e. Rs.4,44,00,000/- (Rs.4.44 cr) which fact is discernable from perusal of 2nd MOU found placed at page no. 112 to 113 of PB and the bank statement of M/s. Super Steel Company (refer page 115 & 116) which shows receipt of sale consideration in installments to the tune of Rs.72 Lakhs as shown in First MOU dated 14.02.2017 [through RTGS on 27.02.2017, Rs.20,00,000/- & Rs 10,00,000/-; Rs.10,00,000/- on 02.03.2017; Rs.16 Lakhs + of Rs 16 Lakhs total on 15.03.2017; Total Rs.72,00,000/-]. And as noted (supra), second MOU was executed on 28.08.2017 between M/s. Super Ready Steel Company and M/s. Pharma Air Modular Systems (Refer placed at page no. 112 & 114 of PB) wherein the payment time limit of sale consideration was extended mutually and finally sale consideration was fixed at Rs.4.44 cr and the buyer fulfilled its commitment. From the aforesaid discussion, we find that the assessee was one of the director of M/s. Super Ready Steel Company and by virtue of first MOU dated 14.08.2017 (i.e. five months before search) the factory premises of M/s. Super Ready Steel Company stated therein was agreed/proposed to be sold to M/s. Pharma Air Modular Systems for Rs.4.30 cr (in installments as stated



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therein MOU) and pursuant thereto, payment of Rs.72 Lakhs was received by M/s Super Ready through RTGS on 27.02.2017, 02.03.2017 and 15.03.2017. According to the assessee, after remitting total Rs.72 Lakhs (in cheque) before 15.03.2017, the buyer failed to honor the commitment made to remit the balance sale consideration within the time limit given therein (refer page 107-109 PB). And since the full & final payment was not made by M/s. Pharma Air by 30th April 2017, M/s. Super Ready issued show cause notice to M/s. Pharma Air, wherein the buyer was put to notice for termination of proposed sale of factory premises at Kalamgaon Property; and also forfeiture of Rs.50 Lakhs, since the grace period as verbally agreed upon had also expired on 15th May, 2017. And as noted, pursuant to notice of termination and forfeiture of Rs 50 Lakhs, M/s Pharma Air came up with proposal to extend the time for arranging balance amount, and in order to infuse confidence and show its bonafide, had handed over Rs 35 Lakhs as security deposit through Shri Vinod Gupta, which amount (Rs 30Lakhs) was found during the search. These events are found to have taken place before search on 13th July, 2017; and therefore, assessee's explanation about Rs 30 Lakhs cannot be termed as an afterthought or concocted or cooked up story because assessee has named Shri Vinod Gupta a Senior Employee of M/s Pharma Air to have handed over the money as security deposit and also the purpose for which it was given to him. In such circumstance, the assessee's statement about the source of Rs.30 Lakhs couldn't have been brushed aside, without AO making enquiry at the end of M/s.



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Pharma Air. The AO has not summoned Shri Vinod Gupta who assessee asserts to have handed over the cash on behalf of the buyer M/s Pharma Air and the Ld CIT(A) has rejected the explanation on the specious plea that security deposit is not stated in the agreement/MOU and no confirmation was given by M/s Pharma Air. This observation of Ld CIT(A) was countered by Ld AR that security deposit was handed over to assessee for instilling confidence and to show bonafide of the buyer to go ahead with the transaction, which was an event after the notice of termination in May 2017 and therefore, obviously security deposit was not in the terms of MOU dated February 2017. We find considerable merit in the submission of assessee; and moreover, in the light of the materials placed on record, we find that assessee had discharged the burden casted upon him to explain the source of Rs 30 Lakhs and the AO/Ld CIT(A) has not been able to rebut the same, therefore, the impugned action of Ld CIT(A) to reject the explanation of assessee which was recorded during search u/s 132(4) cannot be countenanced by us. In view of the aforesaid facts and circumstances, we are of the view that the explanation given by assessee at the time of search is plausible and we are inclined to accept the explanation of the assessee regarding of Rs.30 Lakhs.

38. Coming to the balance amount seized of Rs.1,77,000/-, the assessee has explained that it was available from the cash balance disclosed by the family members and filed the copies of the cash book and balance sheet of the assessee and family members which are found enclosed at page no. 11 to 46 of PB. The cash balance as on the date of



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search in the books of the family members were brought to the notice of Ld. CIT(A) as under: -

Sr. No	Name of the assessee	Cash balance as on 13.07.2017 (Rs.)
1	Rohit Gupta	3,60,000
2	Charu Gupta	2,80,000
3	Poonam Gupta	1,80,000
	Total	8,20,000

39. And the Ld. CIT(A) called for remand report from AO. However, the AO did not accept that source of balance amount of Rs.1,77,000/- was from cash available in cash book on the reason stated herein under: -

“On perusal of cash book of the Rohit Gupta (assessee), Charu Gupta (wife) and Poonam Gupta (mother) for the period 01.04.2016 to 31.03.2017 submitted as additional evidence, it can be seen that the total cash balance was Rs.8,20,000/- as on 31.03.2017 and not as on 13.07.2017 which is the date of search. It is to be noted that more than 3 months had elapsed from 31.03.2017 till the date of search and it can be logically concluded that the assessee and his family members must have incurred certain expenses from this cash balance on hand. Thus, assessee’s justification of cash found at his premise on the basis of cash balance as on 31.03.2017 is not justified.”

40. According to the AO, the cash book of all the three (3) members was for the period of 01.04.2016 to 31.03.2017 which shows cash balance of Rs.8,20,000/- as on 31.03.2017 and not as on 13.07.2017 (date of search). Therefore, according to him, the cash available with the assessee and family members could have been expended between 01.04.2017 to 13.07.2017. However, we do not countenance the



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reasoning given by the AO because the Ld. AR explained that AO erred in finding that cash balance as per cash book was as on 31.03.2017, whereas according to Ld. AR cash book was drawn as on date of search i.e. 13.07.2017. And it is noted that assessee has also brought to the notice of the Ld. CIT(A) that the assessee and family members had sufficient own funds to incur expenses viz assessee had own capital of Rs.4.18 cr as on 31.03.2017, Mrs. Charu Gupta had Rs.2.11 cr as capital balance and Mrs. Poonam Gupta had capital balance of Rs.2.30 cr. And we note that there are drawings from the bank between 01.04.2017 to 13.07.2017. Therefore, explanation of assessee regarding the balance amount of Rs.1,77,000/- also stands explained. And therefore, the assessee has been able to give plausible explanation regarding cash of Rs.31,77,000/- as noted (supra). Therefore, the addition of Rs.31,77,000/- was not warranted and consequently, the addition made by the AO stands deleted.

41. In the result, the appeal of the assessee is allowed and the appeal of the revenue stands dismissed.

Order pronounced in the open court on this 12/04/2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12/04/2024.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

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