

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "G", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &  
Shri B R Baskaran, Hon'ble Accountant Member

ITA No.3757/Mum/2023 for Assessment Year : 2008-09

Smt Shilpa Rajesh Patel, 1/24, Kailash Kiran, Tilak Road, Ghatkopar (E), Mumbai- 400 077.  PAN : AFGPP7706K  (Appellant)	Vs.	The ITO Ward 27(3)(3), Navi Mumbai.    (Respondent)
---	-----	--

Appellant By : Shri Rajiv Khandelwal, CA  
Respondent By : Shri Manoj Kumar Singh- Sr. AR

Date of Hearing : 07.03.2024	Date of Pronouncement: 10.04.2024
------------------------------	-----------------------------------

**ORDER**

**Per Justice (Retd.) C V Bhadang :**

This appeal by the assessee is directed against order dated 22.08.2023 passed by the CIT(A) thereby confirming the addition of Rs. 3,17,060/- made by the Assessing Officer ('AO' for short) by order dated 16.03.2016 for A.Y. 2008-09.

2. The appellant – assessee had filed her return of income on 27.12.2008, declaring a total income of Rs.1,92,720/-. The return was processed under section 143 (1) of the Income Tax Act 1961 ('Act' for short.) Subsequently, the AO received information that one Shri. B. Jain was engaged in fraudulent billing

activities and in giving accommodation entries of unsecured loans and bogus purchases to various beneficiaries including the assessee in this case. On the basis of the said information the AO re-opened the assessment under section 148 of the act by recording reasons. The assessee filed a letter dated 06.11.2015 thereby adopting the original return filed on 27.12.2010 as the return filed in response to notice u/s 148 of the Act. Incidentally, the assessee also questioned the reopening u/s section 148 of the Act.

3. Be that as it may, in so far as the subject transaction of Rs.3,17,060/- is concerned, the appellant assessee claimed that it was relating to purchase of cut and polished diamonds from M/s. Jewel Diam, which had been duly accounted for in her books of account. In support thereof the appellant produced copy of invoice from M/s. Jewel Diam and a copy of the capital account.

4. The AO in order to verify the genuineness of the transaction, issued notice u/s 133 (6) of the Act to M/s. Jewel Diam on 10.12.2015. In response to this M/s Jewel Diam filed a reply dated 15.12.2015. However, according to the AO on verification of the same there were certain discrepancies noticed as set out in para 6 of the assessment order. Eventually the AO refused to accept the genuineness of the alleged transaction and the proceeded to make an addition of Rs.3,17,060/-. Incidentally, the assessment order does not show as to under which provision the addition is made.

5. Feeling aggrieved, the appellant challenged the same before the CIT(A). The CIT(A) confirmed the addition. Hence this appeal.

6. We have heard the learned counsel for the appellant and the learned CIT-DR. Perused record.

7. It is submitted by the learned counsel for the appellant that the impugned addition could not have been made, upon doubting the genuineness of the transaction. It is submitted that the purchase has been duly established and it has been accounted for in the books of account. The payment is made through banking channel and the said amount has also not been claimed as expenditure. The learned counsel also sought to challenge the reopening, on the ground that the reasons recorded are not sufficient to reopen the assessment.

8. The CIT-DR has supported the impugned order. It is submitted that the AO after meticulous examination of the documents and the reply filed by M/s. Jewel Diam has rightly found that there are discrepancies sufficient to doubt the genuineness of the transaction.

9. We have considered the submissions made. In this case we find that the addition could not have been made and, therefore, we do not find it necessary to go into the question whether the reopening was appropriate. The appellant is an individual. She had filed her return for the relevant period declaring income on account of "business and profession" and "income from other sources". The transaction of purchase of the gold/diamond jewelry has been reflected in the capital account for assessment year 2008-09. That amount has not even been claimed as expenditure. Thus, the AO had no occasion to make addition by purportedly disallowing the said amount as expenditure. A perusal of para 11 of the assessment order shows that the AO has disallowed the loans/purchases (as accounted by the assessee of Rs.3,17,060/-). Thus the AO has not even come to a definite conclusion as to whether the amount was claimed as unsecured loan or otherwise.

10. We have carefully gone through the order passed by the CIT(A). The major part of the order is devoted to the reopening u/s 148 of the Act. The merits of the addition have been dealt with only in para 8.3 and 8.3.1 of the order. The CIT(A) has only observed that the assessee has failed to demonstrate her claim that the said amount has not been claimed as expenditure. We are unable to accept the same.

11. In that view of the matter, the appeal succeeds. The AO is directed to delete the impugned addition. The appeal is allowed in the aforesaid terms.

Order pronounced in the open court on 10<sup>th</sup> April, 2024.

Sd/-

[B R Baskaran]  
ACCOUNTANT MEMBER  
Mumbai, Dated : 10<sup>th</sup> April, 2024.  
SA

Sd/-

[Justice (Retd.) C V Bhadang]  
PRESIDENT

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'G' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai