

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE
SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 272/DEL/2023
Asstt. Year: 2017-18

Parish Agarwal, (Prop. Of M/s Balsons Jewellers) J-51, Sector-18, Gautam Budh Nagar, Noida, Uttar Pradesh 201 301 PAN AEIPA1187Q	Vs.	ITO, Ward-5(2)(4) Noida
(Appellant)		(Respondent)

ITA No. 579/Del/2023
Asstt. Year 2017-18

DCIT, Central Circle-1, Noida	Vs.	Parish Agarwal, (Prop. Of M/s. Balsons Jewellers) J-51, Sector-18, Gautam Budh Nagar, Noida, Uttar Pradesh 201 301 PAN AEIPA1187Q
(Appellant)		(Respondent)

Assessee by:	Shri Rajeev Saxena, Advocate Shri Dishant Sethi, Advocate Ms. Sumanagla Saxena, Advocate Shri Shyam Sunder, Advocate
Department by:	Shri P N Barnwal, CIT(DR)
Date of Hearing:	03.06.2024
Date of pronouncement:	02.07.2024

ORDER

PER VIMAL KUMAR, JM

Appeals by the Assessee and Revenue Department are against order dated 14.12.2022 of the Learned Commissioner of Income Tax (Appeals) [hereinafter referred as “Learned CIT(A)” arising from assessment order dated 31.12.2019 of Income Tax Officer (hereafter referred as “Learned AO”) was partly allowed by deleting some of additions and some additions upheld and Ld. AO was directed to compute interest.

2. Brief facts of case are that appellant/assessee e-filed return of income for assessment year 2017-18 declaring income of Rs. 13,85,040/-. The case was selected for scrutiny through CASS. Notice under section 143(2) of the Act dated 14.08.2018 was issued and served upon the assessee fixing date of compliance on 24.08.2018. The information was transferred from Investigation Wing, Noida that survey action under section 133A Act, was conducted on the business premise of M/s. Balsons Jewellers, J-51, Sector-18, Noida (Prop. Shri Parish Agarwal) on 18.3.2017. No documents including incriminating documents which were impounded during the course of survey proceedings have been received. Notices under section 142(1) of the Income Tax Act, 1961 along with its questionnaire were issued. The assessee has submitted his reply from time to time. The assessee is running a proprietorship firm namely Balson Jewellers at J-51, Sector-18, Noida. The proprietorship firm is working as traders / manufactures of jewellery of gold and diamonds. The assessee

has submitted copy of cash book. Copy of sales book along with sales bill, copy of purchase book along with purchase bills, copy of expenses ledger, copy of confirmation of loans outstanding and copy of stock register for the period 1.4.2016 to 31.3.2017. On perusal of the reply and submissions notice under section 133(6) was issued to all the parties regarding the confirmation of unsecured loan given to the assessee. After receiving confirmation Learned AO vide order dated 31.12.2019 made addition of Rs. 2,03,87,482/- on account of unexplained cash deposit during demonetisation under section 69A of the Act, addition of Rs. 78,35,366/- under section 68 of the Act on account of unexplained capital and addition of Rs. 91,07,718/- on account of difference in stock found during survey proceedings.

3. Against assessment order dated 31.12.2019 appellant / assessee preferred appeal before the Learned CIT(A). Learned CIT(A) vide order dated 14.12.2022 partly allowed the appeal in above terms.

4. Assessee/appellant raised grounds qua the addition of Rs.27,00,000/- under section 68 of the Act on account of unsecured loans was confirmed and addition of Rs. 5,88,708/- under section 68 of the I.T. Act on account of capital introduced by the assessee during the year out of business of sale purchase of jewellery in his proprietary concern.

5. Department of Revenue raised grounds regarding the deletion of the addition of Rs. 84,00,000/- out of total addition of Rs. 1,11,00,000/- on account of unsecured loans and deleting of

the addition of Rs. 2,03,87,482/- made on account of cash sales and deleting of the addition of Rs. 25,50,000/- made on account of capital introduced by the proprietor and deleting of the addition of Rs. 91,07,718/- made on account of difference in value of stock.

6. Being aggrieved appellants/assessee and revenue preferred present appeals.

7. Learned Authorised representative for assessee submitted that Learned CIT(A) erred in confirming addition of Rs. 27,00,000/- under section 68 on account of unsecured loan received by assessee. The assessee filed confirmation of accounts along with PAN of Smt Sanjesh wife of Shri Rajbir Singh regarding receiving of Rs. 7,00,000/- loan. However Learned AO took no steps for downloading of ITR from PAN and for making inquiries. Addition was made on basis of suspicion. Sale invoice of Rs. 8,00,000/- shows the amount having been returned back which is at page 18-21 of the paper book.

8. Learned authorised representative for assessee submitted that Learned CIT(A) erred in confirming addition of Rs. 20,00,000/- received from Shree Ratan Agro Industries. Loan confirmation along with PAN was furnished. Learned AO took no steps for downloading of ITR from PAN and for making inquiries. Loan was repaid within the same financial year on 14.10.2016 through the banking channel which is at page 22-23 of the Paper Book. Addition of Rs. 20,00,00/- was merely on the basis of suspicion.

9. Learned authorized representative for assessee submitted that Learned CIT(A) erred in confirming the addition of Rs. 5,88,708/- on account of capital introduced by the assessee during the year out of business of sale purchase of jewellery in his proprietary concern M/s. Balsons Jewellers. During the year under consideration assessee had received consideration of Rs. 3,86,912/- from selling of ornaments and has declared long term capital of Rs. 21,644/- in the ITR. Apart from his balance amount of Rs. 2,23,440/- was introduced from past savings. Learned AO wrongly stated that genuineness and creditworthiness of lenders was not proved. Learned CIT(A) had found genuine cash credit was proved but the source could not be proved which was factually incorrect. Therefore appeal of appellant assessee may be accepted.

10. Learned authorised representative for assessee submitted that Learned CIT(A) has correctly deleted Rs. 84 lacs out of Rs. 1,1 crores regarding receiving of Rs. 19,00,000/- from assessee's HUF (Parish Agarwal HUF) creditworthiness was proved (page 2 of AO) opening balance Rs. 1,17,32,168/- 18.06.2016 cheque Rs. 45,000/- and 29.03.2017 cheque Rs. 18,55,000/-. Suspicion could not be basis for addition in view of supporting documents, the opening balance was of Rs. 1,17,32,168/-. Regarding short term loan of Rs. 9,00,000/- each from close family relations Amit Goel HUF, Himanshu Goel, HUF, Mahesh Kumar Goel, HUF, Lalit Goel HUF, Sunit Goel, HUF. Cheque received on 28.07.2016 and amount returned on 14.10.2016 by assessee through account payee cheque (Paper Book 11 at page -4-42). The creditworthiness was proved and cash deposit out of business

receipts as trader cannot be concluded that appellant has given the same to the lenders. Regarding payment of Rs. 20,00,000/- by Shri Satyanarayan Gupta Paper Book II at pages 43-50 regarding cheque received on 6.10.2016 and amount returned on 6.11.2017 by assessee through banking transaction.

11. Learned authorised representative for assessee submitted that Learned CIT(A) rightly deleted Rs. 2,03,87,482/- on account of cash deposit out of cash sales during demonetisation. Assessee had filed bills regarding purchase of gold jewellery , documents regarding cash sales, VAT returns and books of accounts. All purchase bills, confirmation, ITR of seller were furnished. Suspicion however strong cannot be allowed to take place the steps of truth. Reliance was placed on the following judgments:-

PCIT v. Agson Global (P.) Ltd. High Court of Delhi reported in [2022] 134 (JPB Page 1-26)

DCIT, CC-01, New Delhi vs. Manuvel Malabar Jewellers Pvt. Ltd. in ITA No. 1011/Del/2022 (JPB Page 27-38)

DCIT Circle 4(2) New Delhi Vs. Bawa Jewellers Pvt. Ltd. in ITA No. 352/Del/2021, (JPB Page 39-63)

Fine Gujranwala Jewellers v. ITO in IT Appeal No. 1540(Delhi) of 2022 reproted in [2023] 151 taxmann.com 340 (Delhi-Trib.), (JPB Page 64-73)

ACIT vs. Ramlal Jewellers (P.) Ltd. in IT A No. 1600(Mum) of 2023 reported in [2023] 154 taxmann.com 584 (Mumbai-Trib.) (JPB Page 74-81)

Income Tax Officer 4(3)(1) Vs. M/s. Zee Bangles Pvt. Ltd. in
ITA No. 815/Mum/2022, (JPB Page 82-92)

12. Learned authorised representative for assessee/appellant submitted that Learned CIT(A) had rightly deleted Rs. 72,46,658/- on account of capital introduced. The assessee has taken unsecured loans in his personal capacity from Shri Lalji Mal Hanuman Prasad, EnaAgarwal of Rs. 40,15,000/-, Mukul Kumar Garg of Rs. 1,00,000/- and BKD Realtech Pvt. Ltd. of Rs. 21,90,000/- which is shown in his saving bank account. It is found that this concern had creditworthiness to give the loans to this extent as it had sufficient balance in the bank account so all the three limbs of a genuine cash credit were proved.

13. Learned authorised representative for assessee submitted that amount of Rs. 91,07,718/- on account of difference in value of stock found during survey was rightly set aside. In view of valuation report, audit reports of previous years and subsequent years depicting the method of valuation of stock, books of accounts, details of closing stock. So appeal of department may be rejected.

14. Learned representative for revenue department submitted that appellant failed to prove genuineness, creditworthiness of the loan of Rs. 7,00,000/- of creditor Smt Sanjesh along with ledger account and PAN. Sale invoice of Rs. 8,00,000/- showing the amount having been returned back.

15. Learned authorized representative for department of revenue submitted that the assessee failed to prove genuineness and creditworthiness of Shri Ratan Agro Industries which had

given loan of Rs. 20,00,000/-. Assessee failed to prove genuineness and creditworthiness of lenders for amount of Rs.5,88,708/- showing genuine cash credit. So appeal of the appellant assessee may be rejected.

16. Learned representative for the department of revenue submitted that Learned CIT(A) has erred in law as well as on facts by deleting the addition of Rs. 84,00,000/- out of total addition of Rs. 1,11,00,000/- on account of unsecured loans. Learned CIT(A) has erred in law as well as on facts by deleting the addition of Rs. 2,03,87,482/- made on account of cash sales. Learned CIT(A) has erred in law as well as on facts by deleting the addition of Rs. 25,50,000/- made on account of capital introduced by the proprietor. Learned CIT(A) has erred as well as on facts by deleting the addition of Rs. 91,07,718/- made on account of difference in value of stock found.

17. From examination of record in light of rival contention it is crystal clear that Learned CIT(A) confirmed addition of Rs. 27,00,000/- from Smt Sanjesh and Rs. 20,00,000/- from Shree Ratan Agro Industries . Assessee filed confirmation of accounts paper book at page No. 18 has confirmation of accounts dated 1st April, 2017 of Rs. 7,00,000/- by Smt. Sanjesh. Paper book page No. 20 and 21 ledger account of Shri Rajbir Singh & Sanjesh credit of Rs. 8,00,000/- as on 1st April 2021 and debit of Rs. 8,00,000/- as on 20th February, 2022 copy of tax invoice regarding sale of gold bar 24 KT for Rs, 8,00,000/- page No. 22 dated 1st April, 2017 Rs. 20,00,000/-. So the appellant/assessee had submitted documents regarding confirmation of loan and

particulars by the lender. Learned AO failed to make inquiries regarding the above. So the addition is unsustainable.

18. Regarding sustaining the addition of Rs. 5,88,708/- under section 68 on account of capital introduced by the assessee during the year out of business of sale purchase of jewellery in his proprietary concern M/s. Balsons Jewellers. Assessee claimed to have consideration of Rs. 3,86,912/- from the sale of ornaments which was duly declared in the return of income and Rs. 21,644/- was taxable capital gain on account of indexed cost apart from balance amount of Rs. 2,23,440/- from the past saving. It is a fact that appellant assessee is a proprietorship firm having introduced total capital of Rs. 12,70,366/- . Resultantly the findings of the Learned CIT(A) are not just fair, reasonable and deserves to be set aside. Consequently the appeal of the assessee deserves to be allowed.

19. From perusal of record it is evident that Rs. 84 lacs out of Rs. 1.1 crore was deleted. Receiving of Rs. 19,00,000/- from assessee's HUF (Parish Aggarwal, HUF) creditworthiness was proved. Regarding short term loan of Rs. 9,00,000/- each from close family relations Amit Goel HUF, Himanshu Goel, HUF, Mahesh Kumar Goel, HUF, Lalit Goel HUF, Sunit Goel, HUF. Cheque received on 28.07.2016 and amount returned on 14.10.2016 by assessee through account payee cheque (Paper Book 11 at page -4-42). The creditworthiness was proved and cash deposit out of business receipts as trader cannot be concluded that appellant has given the same to the lenders. Regarding payment of Rs. 20,00,000/- by Shri Satyanarayan

Gupta Paper Book II at pages 43-50 regarding cheque received on 6.10.2016 and amount returned on 6.11.2017 by assessee through banking transaction. Rs. 2,03,87,482/- was deleted by the Learned CIT(A). Assessee had submitted documents regarding purchase bills, confirmation, ITR of seller, sales and purchase bills. No bill was above Rs. 2 lacs, in October 2016, Mahanavmi, Vijaydashmi, Dhan Teras and Deepawali festivals. Reliance is placed before the Hon'ble High Court of Delhi in the case of Principal Commissioner of Income Tax vs Agson Global (P.) Ltd. [2022] 134 taxmann.com 256 (Delhi).

20. In view of the above material facts it is well settled principle of law the findings of Learned CIT(A) deleting the amount deserved to be upheld.

21. Regarding deletion of addition of Rs. 25,50,000/- on account of capital introduced the assessee had filed copy of cash book, copy of sales book along with sales bill, copy of purchase book along with purchase bills, copy of expenses ledger, copy of confirmation of loans outstanding and copy of stock register for the period 1.4.2016 to 31.3.2017.

22. Hence, the appeal of the assessee is allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 2nd July 2024.

sd/-

**(M BALAGANESH)
ACCOUNTANT MEMBER**

Dated: 02/07/2024

Veena

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	