

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, AHMEDABAD**

समक्ष श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य एवं श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य के समक्ष।  
**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं/ ITA No. 821/Ahd/2018  
निर्धारण वर्ष/Assessment Year : 2015-16

Deputy Commissioner of Income-tax, Central Circle-3, Vadodara	<b>बनाम</b> Vs.	M/s. Tash Investment Pvt. Ltd., 9 <sup>th</sup> Floor, ABS Tower, Old Padra Road, Vadodara, Gujarat PAN: AAAC 6737 A
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
निर्धारित की ओर से / Assessee by :		Shri Milin Mehta, AR
प्रत्यर्थी की ओर से / Revenue by:		Shri Pratik Sharma, Sr DR

सुनवाई की तारीख /Date of Hearing : 25/04/2024  
घोषणा की तारीख /Date of Pronouncement: 15/07/2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Present appeal has been filed by the Revenue against the order of the learned Commissioner of Income-tax (Appeals)-12, Ahmedabad [hereinafter referred to as "CIT(A)" for short] dated 18.01.2018 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2015-16.

2. Grounds raised are as under:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,23,80,013/- (Rs.31,24,113/- found from locker No. 1483 of Bank of Baroda + Rs. 92,55,900/- found from locker No.430 of Royal Bank of Scotland) made on account of unexplained jewellery without considering the fact that the assessee could not explain the source of investment and also could not submit the documentary evidences regarding the source of jewellery like purchase bills, vouchers etc.

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law as well as facts and circumstances of the case by treating the transaction of Purchase of share/Mutual Fund/Bonds as investment and income there on as Capital Gain instead of business income.*

3. *It is, therefore, prayed that the order of the Ld. CIT(A)-12, Ahmedabad may be set- aside and that of the A.O. may be restored to the above extent."*

3. The brief background of the case is that search action u/s 132 of the Act was undertaken in the case of Rakesh Agrawal Group of cases on 12.02.2015, which included the assessee also. Thereafter the case for the impugned year was selected for scrutiny and assessment framed u/s 143(3) of the Act making various additions; out of which, two additions were deleted by the Id. CIT(A), against which the Revenue has come up in appeal before us. The two additions relate to the following:-

- (i) unexplained investment in jewellery of Rs.1,23,80,013/-
- (ii) re-characterizing the income earned by the assessee from dealing in shares as business income as opposed to long term and short term capital gains returned by the assessee on the same.

4. The grounds of appeal raised by the Revenue challenging the order of the Id. CIT(A) accordingly on account of the above as under:-

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,23,80,013/- (Rs.31,24,113/- found from locker No. 1483 of Bank of Baroda + Rs. 92,55,900/- found from locker No.430 of Royal Bank of Scotland) made on account of unexplained jewellery without considering the fact that the assessee could not explain the source of investment and also could not submit the documentary evidences regarding the source of jewellery like purchase bills, vouchers etc.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law as well as facts and circumstances of the case by treating the transaction of Purchase of share/Mutual Fund/Bonds as investment and income there on as Capital Gain instead of business income."*

5. With respect to Ground No.1 raised by the Revenue relating to the deletion of addition made on account of unexplained jewellery, the Id. Counsel for the assessee, at the outset, pointed out that, on the aspect of unexplained jewellery, the addition made in the entire Rakesh Agrawal Group had been deleted by the Id. CIT(A) by way of a holistic reasoning taken in all the cases relating to the Group and, in a majority of the cases, the matter had travelled upto the ITAT, who in turn had confirmed the order of the Id. CIT(A). That, in effect, therefore, the issues stood covered in favour of the assessee by the decision of the ITAT in the Group cases. Our attention was drawn to the order of the ITAT in ITA Nos. 718/Ahd/2018 and others, dated 31.10.2023, in the case of DCIT Vs. Shri Rakesh S. Agrawal and others; copy of which was placed before us.

6. The Id. DR fairly agreed with the same, though he heavily relied upon the order of the Assessing Officer.

7. In view of the admitted fact that the issue of addition on account of unexplained investment in jewellery stands covered in favour of the assessee by the order of the ITAT in the connected group cases we do not see any reason to interfere in the order of the Id. CIT(A) deleting the addition made on account of the same amounting to Rs.1,23,80,013/-.

Be that so, we have gone through the order of the authorities below and have also gone through the orders of the ITAT in the case of Shri Rakesh S. Agrawal & others (supra) as cited before us and we have noted that the addition made on account of unexplained investment in jewellery in the case of the assessee was by way of common reasoning adopted by the Assessing Officer in all the group cases and dealt with by the Id. CIT(A) also accordingly deleting the addition made following a common reasoning.

8. To bring out the facts of the case, search action on the group including the assessee revealed gold and diamond jewellery found at various premises and in bank lockers, which were seized also. The stand of the group was that all jewellery was from disclosed sources and was duly disclosed in the wealth tax returns of different assesses in the group. But the same was rejected by the AO finding primarily that the valuation of the jewellery found was much more than that disclosed in wealth tax returns and also that some items of jewellery did not match in weight and description. The Id. CIT(A) took a holistic view of the matter with respect to the whole group and held that with respect to the jewellery found with the assesseees which matched in weight and description with that disclosed in the Wealth Tax Returns filed; there was no question of making any addition on account of unexplained investment in jewellery even if their valuation grossly differed with respect to that shown in the Wealth Tax Returns and that valued by the Departmental Valuer during search. The Ld. CIT(A) dealt with the aspect of difference in valuation and did not much merit in the valuation of the DVO. The Id. CIT(A) held that as long as the jewellery matched in all respects there was no occasion to treat the investment in the same as unaccounted for. With respect to the unmatched jewellery, he held that it should first be set off against the unmatched jewellery as per Wealth Tax Returns and the balance remaining be treated as belonging to person who owns it up and not from whose possession it is found. It was only the balance the Id. CIT(A) held to be taxable in the hands of the various assesses.

9. The matter travelled to the ITAT in the case of various group assesseees whose order in the case of Rakesh Agarwal & Others (supra) was placed before us. On going through the order of the ITAT, we find that the addition made in the case of various persons belonging to the Group on identical basis which was deleted by the Id. CIT(A) on identical reasoning was upheld by

the ITAT. The findings of the ITAT in this regard are at paragraph Nos. 22 to 29 of its order as under:-

*“22. We see no reason to disagree with the ld. CIT(A).*

*The entire exercise of adjudicating the issue of unexplained jewellery can be divided into the following components –*

- Jewellery which matched with wealth tax returns in description & weight*
- Jewellery which did not match with wealth tax returns but was given credit by Ld.CIT(A) of weight of un matched jewellery of wealth tax return*
- Jewellery surrendered as unexplained by the assessee s themselves.*

*23. With respect to the findings of the Ld.CIT(A) on jewellery which matched in description and weight with the wealth tax returns, being 9,397.650 gms comprising of gold weight 8,016.330 gms and diamond 1,485.900 Ct., and no other jewellery of matching description being found during search, we are in complete agreement with him that that the only logical conclusion was that such jewelleries are to be taken as those disclosed in the Wealth Tax Returns only. We completely agree with ld. CIT(A) that it is preposterous to hold that such identical jewellery found during search as different from that disclosed in the Wealth Tax Returns when there is no jewellery found during search identical in all terms with that disclosed in the Wealth Tax Returns. The finding of the Ld.CIT(A) in this regard is very pertinent that having conducted search and covered multiple premises and numerous receptacles in the group cases, the convenience of balance has to be in favour of the person searched and the inference/ conclusion against the person searched is that nothing more has remained undiscovered by the Department. That any presumption of separate set of similar jewellery should be based on hard undisputed facts.*

*Having said so, we agree with the Ld.CIT(A), that any basis adopted by the AO for treating such matched jewellery as unexplained is unacceptable, be it higher valuation by DVO or non operation of locker in which it was kept.*

*24. Be that so we agree with the reasoning of the Ld.CIT(A) for rejecting higher valuation of jewellery by DVO as basis for treating matched jewellery as unexplained. Valuation is not an exact science, and in case of precious gems and stones, being a matter of estimate of size, weight and quality; there may be difference in valuation as submitted by two valuers.*

*So also for jewellery found in two lockers, i.e. locker Nos. 907 and 1091, whose items otherwise tallied with that disclosed in the Wealth Tax Returns, we agree with the ld. CIT(A) that they cannot be treated as different from that*

*disclosed in the Wealth Tax Returns for the reason that the lockers were not found to be operated when the valuation was done by the Registered Valuer of the assessees.*

*25. We have considered the facts relating to this aspect of two lockers and we find that the case of the Revenue broadly is that these lockers were last operated in 2007, but, as per the admission of the assessees during search, the valuation report prepared by the Registered Valuer dated 31.03.2012 was prepared on the basis of valuation done in 2009. The Revenue's contention is that when the locker was last operated in 2007, there could be no possibility of valuation of jewelleries contained in these lockers done in 2009, and therefore, the jewellery found in these two lockers, though they tallied in terms of gross weight and description with that disclosed in the Wealth Tax Returns, were held to be different from those disclosed in the returns.*

*26. In this regard, we are in complete agreement with the ld. CIT(A) that if the case of the Revenue is that these two lockers were last operated in 2007, then in any case the jewelleries contained in these lockers could not be treated as unexplained investment for the impugned year i.e. AY 2015-16. Even otherwise, we find that the Ld.CIT(A) has correctly noted that the AO has based his findings on incorrect facts of the lockers last being operated in 2007. The Assessing Officer's finding is based on a certificate obtained from the bank where these two lockers are maintained. The certificate is accompanied with the attendance register of 2007 and 2011. The certificate of the bank is reproduced at page no. 14 of the assessment order and the attendance register for locker operation is reproduced at page no. 15 and 16 of the assessment order in the case of Smt. Madhavi V. Agrawal. The facts relating to the issue are that, in locker No.907, jewelleries worth Rs.7,51,02,204/- as valued by DVO was found and in locker No. 1091 jewelleries worth Rs.26,93,200/- was found. The assessee had claimed all these jewelleries to be returned to Wealth Tax Returns of different assessees as per valuation report of the Registered Valuer dated 31.03.2012. The Registered Valuer had stated to have valued the jewellery after physically examining them. However, it was subsequently admitted by the assessees that on 31.03.2012 the keys of these two lockers were not available and, therefore, the Registered Valuer had certified their value on the basis of his certificate issued in 2009. The certificate of the bank submitting the last date of operation of these two lockers along with the daily register of operation of lockers as evidenced clearly demonstrates that locker No.907, which contained the substantial jewelleries, was last operated by Smt. Uma R. Agrawal on 08.02.2011. These facts find mention in the first paragraph of the bank's certificate also. The Assessing Officer, however, has noted the last date of operation of locker No. 907 as 14.11.2007, on which date also this locker was operated by Smt. Uma R. Agrawal. But, the daily attendance register also shows operation of this locker on 08.02.2011. Therefore, incorrectly noting the*

last date of operation of locker No.907 as in 2007, the Assessing Officer held that the Registered Valuer of the assessee could not have given a report in 2009 after physically examining the contents of the locker. Since, factually this locker was last operated in 2011; therefore, this basis of the Assessing Officer for rejecting the Registered Valuer's Report is rightly found by the Ld.CIT(A) to be not correct. On the contrary, the assessee's explanation of the contents in the locker being explained with that returned in the Wealth Tax Returns based on the Registered Valuer's Report prepared in 2009 is substantiated with the fact that the locker was operated during that period.

27. Therefore, with respect to items of jewellery and ornaments which matched with the Wealth tax Returns both in weight and description to the extent of gross weight of 9397.65 gms as found by the Assessing Officer himself during the assessment proceedings, we endorse the finding of the ld. CIT(A) that no addition on account of unexplained investment can be made either on account of huge difference in valuation of the items by the DVO as compared to the Registered Valuer or on account of his conclusion of last operation of two lockers in Bank of Baroda.

28. With respect to the unmatched jewellery found during search, we agree with the Ld.CIT(A) that credit should be given of the unmatched jewellery disclosed in the Wealth Tax Returns. He has noted the unmatched jewellery found during search of gross weight of 8,688.050 gms comprising of gold weight 7,324.914 gms and diamond 1047.050 Ct. and the unmatched jewellery as per the Wealth Tax Returns of the Group, he has noted to be gross weight 47.44.840 gms consisting of gold weight 3387.497 gms and diamond 825.040 Ct. Jewellery purchased over years does normally undergo changes in design and style due to renovation, exchange and repairs undertaken periodically. Disclosure in wealth tax returns coupled with copies of bills of purchase and bank statements showing payment through banking channels furnished by the assessee sufficiently evidence the fact of jewellery purchased over the years from disclosed sources. With nothing found by the department during search of such jewellery being converted into any other asset we do not find any infirmity in the Ld.CIT(A) giving credit of the same to the unmatched jewellery found during search.

29. As for the balance unexplained jewellery Ld. CIT(A) has, noted that the assessee themselves have admitted certain jewellery as unexplained and included in their Income-tax Returns for the impugned year. He noted the same to be of gross weight of 2026.810 gms, comprising of gold weight 2201.528 gms and diamond 82.890 Ct., reducing the same from the balance jewellery and ornaments required to be explained by the Group which came to gross weight 3,943.260 gms, comprising of gold weight 3,937.147 gms and diamond 2,026.810 Ct., he held that the unexplained jewellery remaining to

*be explained remained in the hands of Smt. Ruchika Agrawal entirely who is not an assessee before us. This finding of fact by the ld. CIT(A) has also remained uncontroverted before us.*

*In effect, we uphold the order of the Ld.CIT(A) in the case of all the assessee before us deleting the addition of all the matched jewellery and the unmatched jewellery to the extent of jewellery remaining unmatched as disclosed in the wealth tax returns."*

10. In the present case admittedly it is jewellery found in locker No.1483 of Bank of Baroda, Alkapuri and locker No.430 of Royal Bank of Scotland which was attributed as belonging to the assessee and rejecting all the explanations of the assessee vis-à-vis the same thereof, the Assessing Officer made addition on account of unexplained jewellery amounting to Rs.1,23,80,013/- as unexplained investment in the hands of the assessee. The entire jewellery in locker Nos. 1483 and 430 was found by the ld. CITA(A) to be disclosed in the Wealth Tax Returns, both matched and unmatched; and therefore, the entire addition made by the Assessing Officer was deleted.

11. Since the ITAT has deleted addition of unexplained investment in jewellery in the cases of persons belonging to the Rakesh Agrawal Group, upholding identical reasoning of the Ld. CIT(A) as in the present case, the order of the ld. CIT(A) , we hold, calls for no interference.

Ground of appeal No. 1 of the Revenue is dismissed.

12. Ground of appeal No.2 relates to the AO treating the transactions of trading in shares by the assessee as business transactions and the income earned therefrom, therefore, liable to be taxable under the head 'income from business and profession', as opposed to the assessee treating it as income earned from long term and short term capital gains.

13. The ld. Counsel for the assessee fairly pointed out that identical issue had been adjudicated by the ITAT in the case of the assessee for AY 2012-13

and AY 2011-12 in ITA Nos. 1162 & 1614/Ahd/2016, deciding the issue against the assessee and in favour of the Revenue; thus, restoring the order of the Assessing Officer treating the transactions as being in the nature of business. Copy of the order was placed before us. It is further pointed out that the assessee had filed an appeal against this decision of the ITAT to the Hon'ble High Court of Gujarat, which was admitted on the substantial question of law as under:-

*"Whether the Income Tax Appellate Tribunal has erred in law and on facts in reversing the order of CIT(A) and restoring the order of Assessing Officer holding that the income earned by the assessee from the transactions of shares & securities amount to business income and not capital gain."*

14. In view of the above, since the issue already stands adjudicated against the assessee by the ITAT in the preceding years, following the said decision, this ground of appeal raised by the Revenue is allowed, and the order of the Assessing Officer treating the transactions as business transactions is restored.

The ground of appeal No.2 raised by the Revenue is accordingly allowed.

15. In effect, the appeal of the Revenue is partly allowed.

**Order pronounced in the open Court on 15/07/2024 at Ahmedabad.**

Sd/-

**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**  
(टी.आर. सेन्थिल कुमार, न्यायिक सदस्य)  
Ahmedabad, dated 15/07/2024

Sd/-

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
(अन्नपूर्णा गुप्ता, लेखा सदस्य)

**आदेश की प्रतिलिपि ढ प्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./ Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad