

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

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 198/Mum/2024
(Assessment year: 2018-19)**

Avinash Alok Jajodia, 67C, Basant Villa, Bhulabhai Desai Road, Mumbai-400 026 PAN : ACUPJ8194J	vs	Deputy Commissioner of Income- tax-Cir-8(4), 658, 6 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Atul Mehta
Respondent by : Shri Manoj Kumar Sinha (CIT DR)

Date of hearing : 10/07/2024
Date of pronouncement : 12/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is filed against the order of the Commissioner of Income-tax (Appeals)-50, Mumbai [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2018-19 to date of order 30.11.2023. The impugned order was emanated from the order of the Deputy Commissioner of Income-tax, Central Circle-8, Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act, date of order 28/12/2019.

2. The assessee has taken the following grounds of appeal:-

“1.01 The Learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that the Appellant has asked for an adjournment as the necessary documents were to be gathered from multiple sources and required some time to compile the documents before submission to the learned CIT(A). The Learned CIT(A), without considering the application of the Appellant for adjournment, passed the Appeal Order dismissing the appeal of the Appellant.

2.01 The learned CIT(A) has erred in confirming the addition of Rs. 25,05,8367- made by the learned AO without considering the facts that during the course of Search Proceedings, the Authorized Officials were satisfied with the explanation given by the Appellant and his spouse and had not seized any jewellery during the course of the Search Proceedings.

3.01 The learned CIT(A) has erred in confirming the addition of Rs. 25,05,836 as unexplained investment u/s 69B read with section 115BBE of the Act without considering the facts that some of the jewellery belonged to one of the group companies of the Appellant and also bills / Valuation Report for the same were produced before the Authorized Officials during the course of Search Proceedings as well as during the assessment proceedings before the Learned Assessing Officer.

4.01 The Appellant craves to consider each of the above Grounds of Appeal without prejudice to each other and craves leave to add, alter, delete, amend and / or modify all or any of the above grounds of Appeal at the time or before the date of hearing.”

3. The brief facts of the case are that a search action U/s 132(1) of the Act was conducted in the premises of M/s Aurum Ventures Pvt Ltd and M/s Aurum Platz Pvt Ltd on dated 22/03/2018. During the course of search the appellant's wife in her statement recorded had stated that a locker has been held by them. Subsequently, the locker was operated; jewellery belonging to the assessee was found and seized. The explanation of the assessee was filed, but finally, the

excess jewellery was found worth of Rs.15,73,000/- related to diamond jewellery and balance worth of Rs.9,32,836/-, the normal jewellery which works out total amount of Rs.25,05,836/- which is remained unexplained under section 69B of the Act. The Ld.AO added back the total amount of Rs.25,05,836/- with the total income of the assessee under section 69B of the Act. The aggrieved assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A), after considering the submission of the assessee, dismissed the appeal of the assessee. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR argued vehemently and first placed that the jewellery belongs to the assessee's wife but wrongly it is added back in the hands of the husband. So, the entire addition is wrong and arbitrary. Further, he placed that the Ld.CIT(A) has not allowed the reasonable opportunity to consider the assessee's plea and passed the impugned appeal order *ex parte*. The assessee has not got the reasonable opportunity before the Ld.CIT(A) for submission of his evidence.

5. The Ld.DR argued and placed that the issue was duly discussed by Ld.CIT(A) in the appeal order. The relevant part of the appeal order is reproduced as below:-

"11. During the appeal proceedings in spite of giving adequate opportunities the appellant has not furnished any submission /explanation or any documentary evidence to substantial grounds of appeal raised. The only explanation given by the appellant before the AO regarding gold jewellery was that the jewellery items are very old and has been received as gift on the occasion of birth of two sons from grandmother of appellant and grandmother of appellant's wife. This is very general explanation submitted before the AO without any concrete evidence. However, the AO has considered the appellant's submission and has given relief to the appellant as per the CBDT's Instruction

No.1994 dated 11.05.1994. 800 gms. jewellery (500 gms of Mrs. Sonali Jajodia + 100 gms Avinash Jajodia + 200 gms for two sons) is considered as personal jewelry covered by CBDT's Instruction. Thus, the AO has already considered the appellant submission. Regarding, the remaining jewellery of 324.40 gms, the appellant has not furnished any documentary evidence to explain the source of acquisition of the same.

11.1 It is also strange that the source of entire jewellery is explained as a gift and

no jewellery has been purchased by the appellant. In spite of giving several opportunities during the appeal proceedings the appellant has not furnished any documentary evidence/ explanation to explain the source of this gold jewellery.

Regarding the source of diamond jewellery, except stating that some items of diamond jewellery pertain to M/s. Swan Investment and Trading Pvt Ltd, no documentary evidence has been furnished either before the AO or before me during the appeal proceedings.

12. During appellate proceedings also, in spite of giving adequate opportunities as discussed in the above mentioned para's the appellant has not furnished any documentary evidence in support of grounds of appeal raised. No document whatsoever has been submitted during the appeal proceedings in support of the appellant's contention. The appellant has not brought on record any contrary evidence/documents to disapprove the findings on the Assessing Officer.

13. I have considered the assessment order, Grounds of appeals raised and details available on record. On the basis of facts mentioned in the assessment order and particularly in absence of any documents submitted by the appellant to substantiate his case, I am constrained to concur with the AO's findings of fact and decisions. Hence, the addition made by the Assessing Officer in the assessment order is upheld. Accordingly, the appeal filed by the appellant is hereby dismissed ex- party. W*^

14. The appellant has also raised the ground regarding initiation of penalty proceedings u/s.271AAB of the I.T. Act this ground is pre-mature at this stage and hence, not adjudicated. Accordingly, appeal on this ground is dismissed.

15. In the result the appeal is DISMISSED.”

6. We heard the rival submission and considered the documents available in the record. The Ld.AR first placed that the appeal order is passed exparte and without considering the submission of the assessee, the order was passed. The Id. AR took the plea that the addition is made in the hands of the husband, whereas the jewellery belonged to the wife. So a wrong addition was made in the assessee's hand. We find that the reasonable opportunity is denied to the assessee for submission of his evidence before the authority. We direct the assessee to appear before the Id. CIT(A) and liberty is given to place new evidence and to take the new grounds before the Id. CIT(A) in appeal proceedings. The appeal order is duly set aside and the matter is remitted back to the file of the Ld.CIT(A). We are not expressing any view related to the merit of the case which will impair the appeal proceedings before the Ld.CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing before the Ld.CIT(A) in set aside proceedings. On the other hand, the assessee should be diligent and submit the evidence before Id.CIT(A) for quick disposal of the appeal petition.

7. In the result, **ITA No.198/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 12th day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 12/07/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai