

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM, &
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No.4523/Mum/2023
(Assessment Year: 2018-19)**

ITO-20(2)(1), Room No. 304, Piramal Chambers, Dr. S S Roa Marg, Parel, Mumbai-400012.	Vs.	Jinendra Mahendrakumar Shah, Flat No. 2404, 14th Habitat Floor, One Avighna Park, B-Wing, Currey Road, Mumbai-400012. PAN : BAWPS6992Q
Appellant)	:	Respondent)

Revenue/ Appellant by : Shri Jigar Mehta, DR

Respondent /Assessee by : Shri Himanshu Joshi, AR

Date of Hearing : 22.11.2024

Date of Pronouncement : 26.11.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 26.10.2023 for Assessment Year (AY) 2018-19. The Revenue has raised the following grounds of appeal:

“1. “Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of the undisclosed Business income of the assessee of Rs. 9,65,84,796/-.”

2. “Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of the sale consideration of jewellery

items of Rs. 65,13,421/- under Section 69 read with section 115BBE of Income Tax Act.

” 3. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,19,71,580/- under Section 69 read with section 115BBE of Income Tax Act.”

4. The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary.”

2. The assessee is an individual having a Salary Income, Capital Gains and Income from Other Sources. The assessee filed the return of income for AY 2018-19 on 03.08.2018 declaring an income of Rs. 27,65,940/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) completed the assessment, assessing the income of the assessee at Rs. 11,78,58,330/- by making various additions / disallowances including the following:

(i) Business Income	-	Rs. 9,65,84,796/-
(ii) Addition on account of sale of jewelry	-	Rs. 65,13,421/-
(iii) Unexplained Investment in purchase of property	-	Rs. 1,19,71,580/-

3. On further appeal the CIT(A) deleted the above additions /disallowances and gave partial relief in terms of other additions / disallowance made by the AO. The Revenue is in appeal against the order of the CIT(A).

Addition towards unexplained transactions appearing in Bank A/c as Business Income

4. During the course of assessment the AO called on the assessee to submit the Bank A/c details along with narrations of debit and credit entry exceeding Rs.20,000/-. The AO noticed that the assessee has entered into substantial transactions in the Savings Bank A/c held with Axis Bank and accordingly called

on the assessee to furnish the details of the entries along with ledger copies of the parties with whom the transactions have been entered into. The assessee with regard to the major transactions out of the Bank submitted that assessee's father is in the business of gold, bullion for the last 40 years in the name and style of M/s S. Mahendra Kumar Devichand and that the assessee has utilized the "Overdraft for purchase of Residential Property" facility granted from Axis Bank to lend father which was returned the same day. The assessee further submitted that under the terms of the overdraft facility the interest is charged on daily outstanding and since the overdraft balance is settled on the same day no interest charged by Axis Bank. The assessee also submitted that that he is not engaged in any business since AY 2015-16 and that no interest is received from the father towards the funding for father's bullion business which is returned on the same day. The assessee also submitted the details with regard to other transaction in the bank statement the assessee before the AO. The AO did not accept the submissions of the assessee for the reason that the assessee could not substantiate all the credit entries of Axis Bank account. The AO further held that by lending and taking back the loan on a daily basis to the father who is running the bullion business, the assessee is also doing business the income from which is not offered to tax. The AO also held that the assessee has declared business income of Rs.3,69,00,000/- under Income Declaration Scheme-2016 (IDS-2016) and therefore the claim that he is not having any business income since 2015-16 is not acceptable. Accordingly the AO considered the total credit entries of Rs. 965,84,79,616/- (erroneously considered instead of the actual total credit of Rs. 9,65,82,00,746/-) appearing in the credit side of Axis Bank account and made an addition estimating 1% of the total credit to be the business income of the assessee.

5. Aggrieved assessee filed further appeal before the CIT(A). The assessee submitted before the CIT(A) that the details pertaining to the transactions in the Bank A/c have been explained before the AO and that the AO has not considered the submissions. The assessee submitted a summary of the details pertaining to all the entries in the bank account as extracted below:

Particulars	Sum of Amount
Opening Balance	5,87,093.36
Receipts	
Mahendrakumar D Shah	4,83,00,95,000
Transfer From Axis Bank Super Saver Loan A/c	4,78,81,26,125
Parshwa Prism Gems And Jewellery Ltd.	2,26,86,500
Aml J Shah	98,75,000
VIR Gems	38,35,244
Choksi Ashokkumar And Co.	19,80,090
Ranka	6,98,087
Jiendra M Shah HUF	3,00,000
IT Refund	46,410
Others	5,58,290
Payments	
Transfer Axis Bank Super Saver Loan A/c	4,90,80,50,000
Mahendrakumar D Shah	4,72,28,70,000
Ami Jinendra Shah	1,18,90,000
Snehal L. Jain	83,02,500
Landmark Lifestyle Cars P	23,67,445
Parshwa Prism International Pvt. Ltd	11,15,000
TRF/Sant Creation	10,00,000
PN Gadgil And Sons	7,00,000
Nish Developers Pvt. Ltd	5,00,000
Mutual Funds	4,09,000
Jinendra M Shah HUF	2,00,000
LIC Of India	1,89,517
Axis Bank A/C Service Charges	1,51,865
CHQ 37768 Union Bank Of India	1,50,000
Tata AIG General Insurance	1,09,566
Pia J Shah	1,00,000
Krishna Shah	50,000

	Max Life Insurance Company	47,971
	IFFCO Tokio General Insurance	16,925
	Others	2,59,828
Closing Balance		3,08,222

6. The assessee further submitted that major source for the receipt in his Bank A/c is from the overdraft facility of the Housing Loan and major payments are made to M/s S. Mahendra Kumar Devichand which was returned on the same day and repaid to Axis Bank. The assessee also submitted the copy of the loan statements and the confirmations to substantiate the genuineness of the above transaction. The assessee explained before the CIT(A) that since the assessee was lending loan to the tune of Rs. 2 crores on daily basis to the father and which was returned on the same day the volume of transactions as reflected in the statement is huge. The assessee further pleaded that the assessee is not having any business income and therefore, the addition made by the AO by applying 1% on the entire transactions under the head "Business Income" not correct. The assessee also furnished the evidences submitted before the AO to substantiate the entire credit transactions in the bank statement as tabulated below:

Sr. No.	Particulars of credits	Amount (In Rs.)	Remarks
	Shri. Mahendrakumar D Shah(father of the appellqant)	4,83,00,95,000	1. During the course of assessment, the appellant has already furnished 1. Appellant's lodger in the books of M/s. S. Mahendrakumar Dovichand (Shri. Mahendrakumar Devichand's proprietorship concern); 2. ITR Ack., COI, tax Audit report, of Shri. Mahendrakumar D Shah for A. Y. 2017-18 & A.Y. 2018-19; 3. Form GSTR - 9C for F.Y. 2017-18 of M/s. S Mahendrakumar Devichand; 4. VAT Audit Report for F.Y. 2016-17 and F.Y. 2017-18 of M/s. S 2. This Mahednrakumar Devichand.

			2. This amount received from Shri. Mahendrakumar Devichand Shah has already been claimed to be substantiated by Ld. NFAC in its sub-para 7 of para 9.13 on page 23 of the assessment order.
2	Transfer From Axis bank Super Safer Loan A/c bearing account no. 917030046710883	4,78,81,26,125	This represents loan taken by the appellant from 'Axis Bank' which is a well established and popular bank and is being regulated under the BANKING REGULATION ACT, 1949. This establishes the identity and creditworthiness of the bank. Further, to establish the genuineness of the transaction, the appellant has already submitted his own Axis Bank Savings bank account statement evidencing receipt of amounts by the appellant and corresponding Axis Bank Super Saver Loan account statement. The assessee has already submitted the Axis Bank Loan Account Statement on the letter heads of the Axis Bank itself. Hence, Your Honour may appreciate that the Genuineness, identity and creditworthiness in this respect stands established.
3	Parshwa Prism Gems and Jewellery Ltd. (PPGJL)	2,86,86,500	1. During the course of assessment, the appellant has already furnished 1. Appellant's ledger a/c. in the books of PPGJL 2. Form 16 relating to director's remuneration received by the appellant 2. This amount received from Shri. Mahendrakumar Devichand Shah has already been claimed to be substantiated by Ld. NFAC in its sub-para 7 of para 9.13 on page 23 of the assessment order.
			1. During the course of assessment, the appellant has already furnished 1. Ledger Confirmation from Ami

4	Smt. Ami Jinendra Shah (Appellant's wife)	98,75,000	Jinendra Shah. 2. ITR Ack. Of Ami Jinendra Shah for A. Y. 2017-18 and A. Y. 2018-19 2. This amount received from Shri. Mahendrakumar Devichand Shah has already been claimed to be substantiated by Ld. NFAC in its sub-para 7 of para 9.13 on page 23 of the assessment order.
5	"M/s. Vir Gems" on account of sale of jewellery	38,35,244	1. During the course of assessment, the appellant has already furnished 1. Ledger Confirmation 2. Jewellery sale bills 2. The addition with regards to sale of jewellery has already been dealt in ground no. 3 of this appeal. Further this amount is claimed to have been substantiated by Ld. NFAC in its sub-para 7 of para 9.13 on page 23 of the assessment order.
6	"M/s. Choksi Ashokkumar And co." on account of sale of jewellery	19,80,000	1. During the course of assessment, the appellant has already furnished 1. Ledger Confirmation 2. Jewellery sale bills 2. The addition with regards to sale of jewellery has already been dealt in ground no. 3 of this appeal. Further this amount is claimed to have been substantiated by Ld. NFAC in its sub-para 7 of para 9.13 on page 23 of the assessment order.
7	"Ranka" on account of sale of jewellery	6,98,087	1. During the course of assessment, the appellant has already furnished i) Jewellery sale bills 1. The addition with regards to sale of jewellery has already been dealt in ground no. 3 of this appeal. Further this amount is claimed to have been substantiated by Ld. NFAC in its sub-para 7 of para 9.13 on page 23 of the assessment order.
8	Jinendra M. Shah HUF	3,00,000	This is received from the HUF of the appellant himself.
9	Income Tax Refund for A.Y. 2016-17	46,140	This is already available in the records of the Income Tax Department.

10	Other misc. credits	5,58,290	This represents merely 0.008 % of the total credits in the bank statement and which consists of savings bank interest, dividend income and other miscellaneous receipts.
Total Credits		9,65,82,00,746	

7. The CIT(A) after considering the various submissions and the evidences deleted the addition made by the AO by holding that

“4.5 Held:- I have considered the submission of the appellant and perused the order of the Ld. AO. The primary issue involved in this ground of appeal is whether the appellant has undertaken any business activity from which any business income has arisen to the appellant, which according to the Ld. Assessing Officer was estimated at 1% of the total credit entries of Rs.965,84,79,616/- which amounted to Rs.9,65,84,796/-.

4.5.2 The details of the transactions appearing in the Axis Bank account of the appellant were filed before the Ld. AO as well as before the undersigned. On examining the summary of all the transactions in the Axis Bank account, it is noticed that the major credit appearing in the Bank account of the appellant is in respect of the loan from the Axis Bank and repayments received from S. Mahenderkumar Devichand. The loan received from the Axis Bank is Rs.478,81,26,125/- whereas the repayment from S. Mahenderkumar Devichand is Rs.483,00,95,000/-, during the year under consideration. In aggregate, the aforementioned amount account for more than 99% of the total receipts in the Axis Bank account.

4.5.3 In so far as the loan from Axis Bank is concerned, I find that the appellant has submitted the copy of Loan statement evidencing the loan obtained from the Bank. In so far as the repayment of loan from S. Mahendrakumar Devichand is concerned, I note that the appellant has submitted his ledger account in books of S Mahendrakumar Devichand, ITR Acknowledgement, computation of income, Tax audit report of Mahendrakumar D Shah for AY 2017-18 and AY 2018-19, Form GSTR – 9C for F.Y. 2017-18 & VAT Audit report for F.Y 2016-17 & F.Y. 2017-18. Further, in respect of the loan transaction with S Mahendrakumar Devichand; the appellant has submitted that the appellant had borrowed from Axis Bank approximately Rs. 2 crores which were advanced on a daily basis to M/s. S Mahendrakumar Devichand at the beginning of the day. The said funds

were returned at the end of the day by M/s. S Mahendrakumar Devichand and the amount therefrom were transferred to the Axis Bank Loan account. It is this amount of Rs.2 crores which has gone to and from the bank account of the appellant multiple times in the year under consideration, which has resulted in huge debit and credit being reflected in the bank account of the appellant. The appellant has accordingly contended that it has transacted only in respect of the very same Rs. 2 crores. The contentions of the appellant appear to be correct in view of the evidence on record. The appellant has established the credit entries in respect of the Home Loan transaction as well as repayment received from S Mahendrakumar Devichand by submission of the aforesaid documents and explanations.

4.5.4 In relation to the other credit entries appearing in the Bank accounts of the appellant, I find that the appellant has furnished the following documents to explain the nature and source of the said transactions:

Transactions	Documents submitted
Parshwa Prism Gems And Jewellery Ltd. (PPGJL)	Appellant's ledger in books of PPGJL Form 16 relating to director's remuneration received from PPGJL
Transaction with Ami J. Shah	Ledger confirmation from Ami J. Shah, ITR acknowledgement of Ami J. Shah for AY 2017-18 and AY 2018-19
Transaction with Vir Gems	Ledger Confirmation and Jewellery sale bills
Transaction with Choksi Ashokkumar And Co.	Ledger Confirmation and Jewellery sale bills
Transaction with Ranka	Jewellery sale bills
Transaction with Snehal L. Jain	Ledger confirmation
Transaction with Nish Developers Pvt Ltd	Index II indicting purchase of property from Nish Developers

I am of the opinion that on submission of the aforesaid documents, the appellant had explained the nature and source of the receipts appearing in his

bank account. The primary onus had been discharged by the appellant. Further, the AO had not raised any other aspersions against the aforesaid transactions.

4.5.5 In relation to non-submission of ledger account of certain parties i.e. Nish Developers, Sant Creation, Krishna Shah, Pia Jinendra Shah, PN Gadgil & Sons mentioned in the assessment order, I find that the said transaction represent payments which have been made by the appellant. Though the appellant ought to have submitted the details called for in respect of the said parties, even non-submission of such ledger confirmations thereof could not have any bearing on the income of the appellant unless and until the AO could prove that the appellant had claimed deduction in respect of the said amounts.

4.5.6 I find that the Ld. AO has also observed that in view of declaration of Business Income under IDS for AY 2017-18 and in the return of income for AY 2020-21, there is a POSSIBILITY that the appellant is engaged in business activities during the year under consideration. I find that the AO has failed to bring any evidence on record whatsoever to establish his claim that the appellant was engaged in any such business activities. Without any corroborative evidence establishing that the appellant was engaged in any business activities, income from such alleged business cannot be assessed. The reliance on IDS and return of Income for earlier years can be of no avail to the AO as under Income Tax, each year is a separate unit.

4.5.7 The appellant has placed reliance on multiple judicial precedents such as the decision of Hon'ble Apex Court in the case of Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC), Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC), Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC), Omar Salay Mohamed Sait v. CIT [1959] 37 ITR 151 (SC) to establish that estimation and guesswork, howsoever strong, without evidences, cannot be used against the assessee. All these judicial pronouncements, supports the case of the appellant. In absence of the AO having established, the existence of any business operation by the appellant for the year under consideration; the estimation of business income of the appellant is not justified.

4.5.8 Since the appellant has explained the nature and source of credit entry appearing in his bank statement for the year under consideration and the AO has failed to establish the existence of any alleged business activities for the relevant year under consideration; the addition of Rs. 9,65,84,796/- as business

income of the appellant is hereby deleted. The appellant succeeds on this ground. Therefore, the ground of appeal no. 1 is allowed.

8. The ld. DR submitted that the assessee is claimed to have only salary income and capital gains whereas he has availed huge loan from Axis Bank which is not properly substantiated. The ld. DR further submitted that the entire transaction of lending loan to the father in the morning and taking it back in the evening the reason for which is not explained by the assessee. The ld. DR also drew the attention to the observations of the AO where he has held that the assessee has not furnished all the details pertaining to debit and credit entries in the bank statement in spite of repeated reminders. Accordingly, the ld. DR supported the order of the AO.

9. The ld. AR on the other hand submitted that the assessee's father who is in the bullion business has lent loan on 01.07.2017 to the assessee to settle the overdraft facility extended by the Axis Bank to the assessee towards purchase of House Property. The ld AR further submitted that the assessee subsequently utilized the overdraft facility availed from Axis Bank to have daily transaction of returning and taking back the loan from his father. It is submitted that as per the terms agreed with Axis Bank if the outstanding balance is squared off by end of the day no interest shall be charged on the loan account and hence the assessee was entering into the transaction of taking and returning the loan on a daily basis. In this regard our attention was drawn to the Savings bank account statement (page 8 to 20 of paper book), the Housing Loan statement (page 53 to 60 of paper book) and the ledger account of father of the assessee Shri.Mahendrakumar Devichand (page 74 to 78 of paper book). The ld. AR also submitted that the AO has considered only the entries pertaining to loan taken from Axis Bank but failed to take notice of the fact that the loan is returned to Axis Bank on the same day.

Accordingly, the Id AR argued that the AO has erroneously held that the transactions have not been fully explained. The Id. AR submitted that the assessee does not have any business income and therefore making an addition on estimation basis by applying 1% on the entire credits in the bank statements is not correct.

10. We heard the parties and perused the material on record. The AO during the course of assessment called for the bank statement of the assessee and the details pertaining to all the credit entries in the bank statement. The AO held that out of the total deposits of Rs. 965,84,79,616 (as against the correct amount of Rs. 9,65,82,00,746) the assessee could furnish the details for Rs. 484,47,39,024 only and the balance amount is unsubstantiated. The AO further held that treating the entire unexplained amount as income would not be appropriate and accordingly estimated the income of the assessee at 1% of the total deposits to make an addition of Rs.9,65,84,796. The AO considering that the assessee has declared business income under IDS 2016 and that the assessee is rotating the money to fund father's bullion business, treated the estimated income as the Business Income of the assessee. The CIT(A) after considering the details furnished by the assessee gave relief to the assessee by deleted addition made on estimated basis by the AO and the revenue is in appeal before us against the order of the CIT(A).

11. At the outset we notice that the assessee has substantiated all the entries in the bank statement including the credit entries and that the CIT(A) has deleted the addition after examining the said details. We further notice that the AO while making the addition on estimated basis has acknowledged the fact that credit entries to the tune of Rs. 484,47,39,024/- is substantiated based on confirmations from various parties. The relevant extract of the AO's observations is as given below –

On examining the Bank account of Axis Bank, it is noticed that total of credit entries from 01.04.2017 to 31.03.2018 is at Rs. 965,84,79,616/- whereas the assessee could furnish confirmed copy of Ledger account of M/s Parshwa Prism Gems & Jewellery Ltd. for Rs. 98,11,190/-, M/s Choksi Ashok Kumar for Rs. 19,80,090/-, M/s Mahendra Kumar D. Shah for Rs. 480,28,15,000/-, Ms. Ami Jinendra Shah for Rs. 1,79,95,000/-, Snehal L. Jain for Rs.83,02,500/- and M/s Vir Gem for Rs.38,35,244/- totaling to Rs. 484,47,39,024/-. Therefore, the difference of remaining credit amount of Rs. 481,37,40,592/- (Rs. 965,84,79,616 - Rs. 484,47,39,024) remained unsubstantiated.

However, it is noticed that the source of other major credit in the bank statement which is the withdrawals from the overdraft facility from Axis Bank has not been considered by the AO and it is the main reason for the AO to make the addition stating that the remaining entries are unsubstantiated. During the course of hearing, the Id AR drew our attention to the loan statement of the overdraft facility where the corresponding entries of the savings bank a/c are matching with the drawings from the overdraft account to submit that the contention of the AO that the other major credit entries are unsubstantiated is factually incorrect. It is argued that the assessee has discharged the onus of submitting the relevant details pertaining to the credit entries in the bank statement, and that the AO without bringing any contrary material on record has estimated the income by applying a percentage on the total credit entries including those entries for which assessee has provided details as acknowledged by the AO himself. Considering these facts we see merit in the argument of the assessee that the CIT(A) has rightly granted the relief to the assessee after considering the explanations and evidences submitted.

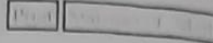
12. The next reason as stated by the AO for making the addition is that the assessee has been giving a loan of Rs.2 crores to the father on a daily basis and the purpose of the same is not submitted. The relevant findings of the AO are extracted below –

On examining the Ledger account of M/s S. Mahendrakumar Devichand, it is noticed that as per their Tax Audit Report, total of credit entries are at Rs. 480,28,15,000/- and total of debit entries is at Rs. 482,95,95,000/- thereby leaving a closing debit balance of Rs. 2,67,80,000/-, which is appearing in the Balance sheet of M/s S. Mahendrakumar Devichand. However, the purpose for which the loans of approx. Rs. 2 crores were stated to be given daily by the assessee to M/s S. Mahendrakumar Devichand for the purpose of purchase of gold bars could not be justified specifically keeping in view the fact that M/s S. Mahendrakumar Devichand is himself having a substantial amount of Rs. 13,12,79,280/- in his Balance sheet under the head "Cash & Bank Balance".

The argument of the assessee is that the assessee's father is engaged in the bullion business and the assessee has been supporting the father by rotating the funds using the overdraft facility availed from the Axis Bank. In this regard, the bench during the course of hearing raised a query that when the overdraft facility is explained as a source for purchase of the house property, how the same facility is used for funding the father's bullion business. The Id AR drew our attention to the terms of the loan agreement to submit that the interest on the overdraft facility is calculated on the daily outstanding balance (clause 5.1 from page 3 of the loan agreement) and that the assessee to avoid interest borrowed funds in the first place borrowed from the father to make the daily balance outstanding a zero. Our attention is further drawn to the relevant entries in the loan statement and the savings account statement as extracted below:-

6/4/2018

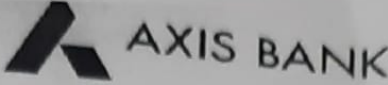
10.0.22.102.8081/AccountLevelStatement/VR/statements/reportStatement.jsp



M. JINENDRA MAHENDRAKUMAR SHAH
B-2404 FLOOR -24TH PLOT -CS
NO-77 B WING ONE AVIGHNAPARK
MAHADEO PALAV MARG CURRY ROAD
MUMBAI
MAHARASHTRA
PIN: 400012
MOBILE: 919920660888
Date: 04-Jun-2018

STATEMENT FOR A/C: 913010013553188 BETWEEN 01-04-2017 AND 31-03-2018

Trans Date	Narration	Chq. No.	Value Date	Withdrawal (INR)	Deposits (INR)	Balance
	OPENING BALANCE :					587093.36
27-04-2017	BRN-CLG-CHQ PAID TO BSH Household appliance M	37743	27-04-2017	5500		581593.36
27-04-2017	BRN-CLG-CHQ PAID TO BSH Household appliance M	37744	27-04-2017	5500		576093.36
09-05-2017	BRN-CLG-CHQ PAID TO LIC OF INDIA	37745	09-05-2017	27915		548178.36
30-05-2017	INB/FT-PARSHWA PRISM GEMS AND JEWELLERY LIMITED/		30-05-2017		275000	823178.36
09-06-2017	NEFT-N160170026298158-SUSHIL FIN SERV PVT/PAID AGA		09-06-2017		57096.5	880274.86
13-06-2017	INB/FT-PARSHWA PRISM GEMS AND JEWELLERY LIMITED/		13-06-2017		3900000	4780274.86
13-06-2017	AMI JINENDRA SHAH	37748	13-06-2017	4600000		180274.86
13-06-2017	PIA J SHAH U/G JINENDRA M SHAH	37749	13-06-2017	50000		130274.86
13-06-2017	By Clq 007134 HDF MUMBAI	7134	13-06-2017		698087	828361.86
14-06-2017	ECS/BAWPS6992Q AY2016 17/CEI7043040490/AXIS BANK		14-06-2017		46410	874771.86
14-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/7595/140617/MUMBAI		14-06-2017		40000	914771.86
16-06-2017	BRN-BY CASH JINENDRA M SHAH		16-06-2017		39800	954571.86
16-06-2017	RTGS/KKBKR22017061600286082/CHOKSI ASHOKKUMAR AND		16-06-2017		1980090	2934661.86
17-06-2017	9272500CPCS LCC 037746	37746	17-06-2017	5750		2928911.86
20-06-2017	SAK/CASH DEP/SAK009562603/1705/BY CASH JINENDRA		20-06-2017		40100	2969011.86
21-06-2017	ECS/AUROBINDO PHARMA LTD/4074678/AXIS BANK LTD		21-06-2017		185	2969199.86
21-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/9024/210617/MUMBAI		21-06-2017		41000	3010199.86
21-06-2017	NEFT/SDC8949071/VIR GEMS/URGENT/		21-06-2017		1500000	4510199.86
22-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/9347/220617/MUMBAI		22-06-2017		39100	4549299.86
22-06-2017	AXIS BANK LTD A/C SERVICE CHARGES	37754	22-06-2017	100000		4449299.86
22-06-2017	AXIS BANK LTD A/C SERVICE CHARGES	37750	22-06-2017	115		4449184.86
22-06-2017	AXIS BANK LTD A/C SERVICE CHARGES	37755	22-06-2017	51750		4397434.86
23-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/9570/230617/MUMBAI		23-06-2017		41100	4438534.86
23-06-2017	RTGS/COSBH17174008061/VIR GEMS/URGENT/		23-06-2017		2335244	6773778.86
24-06-2017	913010013553188-Int.Pd.01-04-2017 to 24-06-2017		24-06-2017		9342	6783120.86
27-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/181/270617/MUMBAI		27-06-2017		42900	6826020.86
28-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/402/280617/MUMBAI		28-06-2017		40200	6266220.86
28-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/404/280617/MUMBAI		28-06-2017		2000	6868220.86
29-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/594/290617/MUMBAI		29-06-2017		41100	6909320.86
29-06-2017	INB/FT-PARSHWA PRISM GEMS AND JEWELLERY LIMITED/		29-06-2017		7199000	14108320.86
29-06-2017	JINENDRA M SHAH	37765	29-06-2017	11300000		2808320.86
30-06-2017	BY CASH DEPOSIT- BNA/T3RH170501/713/300617/MUMBAI		30-06-2017		41000	2849320.86
01-07-2017	JINENDRA M SHAH	37767	01-07-2017	2600000		249320.86
01-07-2017	MAHENDRAKUMAR DEVICHAND SHAH		01-07-2017		29050000	29299320.86
01-07-2017	JINENDRA M SHAH	37769	01-07-2017	29050000		249320.86


53

JINENDRA MAHENDRAKUMAR SHAH

Joint Holder :- AMI JINENDRA SHAH
B-2404 FLOOR -24TH PLOT -CS
NO.77 B WING ONE AVIGHNAPARK
MAHADEO PALAV MARG CURRY ROAD
MUMBAI
MAHARASHTRA
400012

Statement Generated By :- 80049

Customer No : 844752763
Scheme : HL SUPER SAVER FLOATING
Currency : INR

Statement of Account No : 917030046710833 for the period (From : 22-06-2017 To : 14-06-2018)

Tran Date	Chq No	Particulars	Debit	Credit	Balance	Int. Br
		OPENING BALANCE			.00	
27-06-2017		917030046710833:DISB:JINENDRA SHAH	50000000.00		-50000000.00	245
29-06-2017		AMI JINENDRA SHAH		4550000.00	-45450000.00	1705
29-06-2017		JINENDRA M SHAH		11300000.00	-34150000.00	1705
01-07-2017		JINENDRA M SHAH		2600000.00	-31550000.00	1705
01-07-2017		AMI JINENDRA SHAH		2500000.00	-29050000.00	1705
01-07-2017		JINENDRA M SHAH		29050000.00	.00	1705
03-07-2017	33351	JINENDRA M SHAH	29050000.00		-29050000.00	1705
03-07-2017		JINENDRA M SHAH		29050000.00	.00	1705
04-07-2017	33352	JINENDRA M SHAH	29050000.00		-29050000.00	1705
04-07-2017		JINENDRA M SHAH		29050000.00	.00	1705
05-07-2017	33353	JINENDRA M SHAH	29050000.00		-29050000.00	1705
05-07-2017		JINENDRA M SHAH		29050000.00	.00	1705
06-07-2017	33354	JINENDRA M SHAH	29050000.00		-29050000.00	1705
06-07-2017		JINENDRA M SHAH		29050000.00	.00	1705
07-07-2017	33355	JINENDRA M SHAH	29050000.00		-29050000.00	1705
07-07-2017		JINENDRA M SHAH		29050000.00	.00	1705
10-07-2017	33356	JINENDRA M SHAH	28950000.00		-28950000.00	1705
10-07-2017		JINENDRA M SHAH		11500000.00	-17450000.00	1705
10-07-2017		917030046710833:Int.Coll:27-06-2017 to 10-07-2017	44275.00		-17494275.00	1705
11-07-2017	33357	JINENDRA M SHAH	11300000.00		-28794275.00	1705
11-07-2017		JINENDRA M SHAH		28900000.00	105725.00	1705
12-07-2017	33358	JINENDRA M SHAH	28900000.00		-28794275.00	1705
12-07-2017		JINENDRA M SHAH		28900000.00	105725.00	1705
13-07-2017	33359	TRF/1705/JINENDRA SHAH	28900000.00		-28794275.00	1705

13. The ld AR submitted that the assessee has returned the loan to the father out of the drawings from the overdraft facility and this transaction was repeated to support father's bullion business as well as to maintain the outstanding balance in the loan account as zero / nominal to avoid interest charges. From the perusal of the above bank statements of loan as well as savings account we notice that transactions in the savings bank account of the assessee are linked to the Overdraft Housing Loan facility availed by the assessee from Axis Bank. We further notice that the assessee availed the loan on 27.06.2017 (page 53 of paper book) and the same is settled on 01.07.2017. A combined perusal of the loan statement and the savings account statement reveals that the assessee has borrowed an amount of Rs.2,90,50,000 from his father Shri.Mahendrakumar Devichand on 01.07.2017 which is being utilized to square off the Housing Loan on the same day. We further notice that on 03.07.2017 the assessee has again overdrawn from the Housing Loan facility an amount of Rs.2,90,50,000 to pay the father and this is getting squared off on the same day by amount received from assessee's father. We notice that this kind of circular transactions are repeated on a daily basis and this is substantiated from the combined perusal of Savings bank account statement (page 8 to 20 of paper book), the Housing Loan statement (page 53 to 60 of paper book) and the ledger account of father of the assessee Shri.Mahendrakumar Devichand (page 74 to 78 of paper book). Accordingly the major part of the transactions in savings bank account as summarized in the table herein above is substantiated by the circular transactions between the assessee which is sourced from the overdraft facility availed from Axis Bank. Therefore the contention of the assessee that the genuineness of the transaction cannot be questioned when the source is properly explained has merits and estimating the business on this count is not tenable. Accordingly we are unable to agree with the AO finding to make the addition for

the reason that the assessee lending money to the father when father is having enough balance in cash.

14. The AO treated the addition as the business income of the assessee based on the finding that the assessee has declared certain amount as business income under IDS-2016 and that he has had business income in other years. Accordingly the AO has come mentioned that *"it is fair to conclude that the assessee in the year under consideration was also engaged in business activities, which may be with M/s S. Mahendrakumar Devichand but has not declared any income from such business activities being done by him. Therefore, this office is left with no other alternative but to estimate the Business income of the assessee"*. From the perusal of these findings, we notice that the AO has made an assumption without bringing any factual finding on record to come to the conclusion that the assessee is engaged in any business activity during the year under consideration. The AO though has examined the relevant documents including the bank statements etc., estimated the business income on the hypothesis that the assessee "may also be engaged in business activity" without any evidence to substantiate such a claim. For this reason also we are of the view that the addition made by the AO by estimating the business income is not sustainable.

Addition on account of sale of jewelry

15. The AO during the course of assessment noticed that the assessee has declared a Long Term of Capital Gain (LTCG) of Rs. 57,352/- on sale of jewelry. The full value of consideration was at Rs. 65,13,421/- against which the indexed cost of acquisition was deducted to the tune of Rs. 25,77,940/- resulting in LTCG of Rs. 39,35,481/-. The assessee has claimed exemption under section 54F to the tune of Rs. 38,78,129/- and net LTCG of Rs. 57,352/- was offered to tax. The AO

called on the assessee to furnish details pertaining to the LTCG. The assessee submitted the valuation report as on 31.03.2001 in support of the cost of acquisition and the invoices pertaining to the sale of jewelry. After perusing the details submitted by the assessee, the AO treated the entire transaction of LTCG as sham for the reason that

- (i) The assessee has not produced the supporting document for acquisition of the jewelry except the valuation report as of 31.03.2021
- (ii) The difference in the weight and the description of the jewelry sold between the valuation report and the sale invoices is not explained properly.
- (iii) The assessee has not filed the wealth tax return in subsequent years even when the value of the jewelry exceeds the limit for filing wealth tax return
- (iv) The inheritance from grand parents on the occasion of assessee's marriage is not evidenced.

16. The CIT(A) after considering the submissions of the assessee held that the basis on which the AO has treated the entire transaction as sham are not strong enough. The CIT(A) further held that the AO has proceeded to disregard the entire transactions merely based on non-submission of documents like wealth tax etc. is not justifiable. The CIT(A) relied on the decision of the Co-ordinate Bench in the case of Kishori Dwarakanath Pandey Vs. ITO (ITA No. 2558/Mum/2022) and deleted the addition made by the AO.

17. The Id. DR submitted that the items as mentioned in the valuation report and the item mentioned in the sale invoices do not match and therefore, the AO has doubted the entire sale transactions. The Id. DR further submitted that the assessee has submitted before the AO that the purchase invoices could not be produced and that the jewels have been inherited. The Id. DR also submitted that the assessee in that case should have filed the wealth tax return and therefore, the AO is justifying

doubting the claim of the assessee. Accordingly, the ld. DR supported the order of the AO.

18. The ld. AR submitted that the AO has made the addition under section 69 as undisclosed investments whereas the assessee has furnished all the details pertaining to the LTCG. The ld. AR further submitted that the valuation report was obtained by the assessee to substantiate that Fair Market Value (FMV) as on 01.04.2001 and the same has been claimed as cost of acquisition which is as per the provisions of the Income Tax Act. The ld. AR also drew our attention to the details as submitted by the assessee as part of Income Declaration Scheme (page 94 of PB) to submit that jewelry has been declared as part of the scheme and therefore, the AO is not correct in treating the same as sham.

19. We heard the parties and perused the material on record. During the year under consideration the assessee has sold jewelry for a consideration of Rs.65,13,421 and claimed the indexed cost of acquisition of Rs.25,77,940 as a deduction offering the difference as LTCG. For the purpose of cost of acquisition, the assessee obtained the valuation report as on 01.04.2001. The assessee furnished the sale invoices, ledger confirmation from the parties, bank statement reflecting the receipt of sale consideration, valuation report, etc., to substantiate the transaction. The AO did not accept the submissions of the assessee and held the entire transaction as a sham to make an addition of the entire sale consideration. The CIT(A) after considering the documentary evidences and the submissions of the assessee, deleted the addition made by the AO. We notice that the CIT(A) while doing so has given specific findings on the reasons given by the AO to make the additions. From the perusal of the AO's findings, we notice that the main reason for the AO to treat the entire transaction as sham is that the assessee has not

proved that he has been in possession of the jewelry that is sold during the year under consideration. However while doing so the AO has not considered the evidences submitted by the assessee such as sale invoice, confirmation from parties, receipt of sale consideration in the bank statement etc. The reasons for AO not accepting the possession of jewelry are that the assessee has not filed the wealth tax return and that claim of the assessee that the jewelry is received during his marriage took place in 2004 i.e.subsequent to the valuation date. The assessee submitted before the AO that though the marriage took place in 2004, the valuation had to be obtained as of 01.04.2001 as per the provisions of the Act. The AO instead of examining the correctness of the valuation report proceeded to call for proof for jewelry being gifted on the occasion marriage and recorded a finding that the photos of the occasion do not support such claim of the assessee. These findings of the AO in our considered view are not the right basis for making the addition of the sale consideration as unexplained which is already offered as LTCG. Therefore we see no reason to interfere with the decision of the CIT(A) in deleting the addition after examining the evidences submitted by the assessee.

Unexplained Investment of purchase of flat

20. During the course assessment the AO noticed that the assessee has purchased flat for a cost of Rs. 6,11,00,000/- and stamp duty and the registration cost to the tune of Rs. 30,85,000/-. The AO called on the assessee to explain the source for purchase of the said flat. The assessee submitted that he has availed a loan of Rs. 5,00,00,000/- from Axis Bank and the balance amount was funded by wife who is a co-owner in the property. The AO did not accept the submissions of the assessee and treated the amount of Rs. 1,84,85,000/- as unexplained investment in the hands of the assessee.

21. On further appeal the CIT(A) held that

“7.6 Held:- I have considered the submission of the appellant and perused the order of the AO. The first issue for consideration is – what was the total investment in the purchase of land and the second issue is – what are the sources of the investment in this flat.

7.6.2 Perusal of the assessment order shows that the Assessing Officer has taken the total investment at Rs.6,84,85,000/- in the purchase of Flat which includes the purchase cost of Rs.6,11,00,000/- and other expenses of Rs.73,85,000/-. During the course of assessment proceedings, this amount was accepted by the appellant and was sought to be explained by him. However, during the appellate proceedings, it is claimed by the appellant that the total investment in the purchase of Flat was Rs.6,41,85,000/-. On perusal of the details filed during the appellate proceedings, it is evident that the aggregate cost of the immovable property acquired by the appellant works out to Rs.6,41,85,000/- as opposed to Rs.6,84,85,000/- which is mentioned in the order of assessment. The aforesaid facts are evident from the purchase document of immovable property including the agreement. During the assessment proceedings, only the first two pages of the agreement were provided wherein it was evident that the purchase cost was Rs.6,11,00,000/- and the stamp duty was Rs.30,55,000/- and other expenses of Rs.31,580/- taking the aggregate of Rs.6,41,86,580/-. During the appellate proceedings, copy of the entire agreement was sought and provided. Perusal of the same confirms that the total investment in the purchase of flat was Rs.6,41,86,580/-.

7.6.3 As far as the source of investment in this flat is concerned, the investment of Rs.5,00,00,000/- taken as a loan from Axis Bank by the appellant has been accepted by the Ld. AO. The source of the balance investment which the appellant claimed to be made by his wife who is also co-owner was not accepted by the Ld. AO. The reason for making this addition was that the appellant could not provide copy of the Income Tax Returns for the A.Y. 2017-18 & 2018-19 of his wife Ms. Ami J. Shah, who was the co-owner of the property and also he could not provide adequate evidences to explain the source of the funds of his wife.

7.6.4 During the appellate proceedings, the details of the payments made for the purchase property were called for and it is noticed that the amount of Rs.5,00,00,000/- were paid by the appellant from his Bank account and the balance payments were made by his wife and co-owner Ms. Ami J. Shah in the following manner:

<i>Date of transaction</i>	<i>Amount paid by</i>	<i>Payment towards</i>	<i>Bank account from which payment is made</i>	<i>Amount of payment</i>
<i>08.06.2017</i>	<i>Ami Jinendra Shah</i>	<i>Stamp Duty and Registration</i>	<i>913010013762191</i>	<i>30,85,000/-</i>

13.06.2017	Ami Jinendra Shah	Flat Cost	913010013762191	1,04,89,000/-
22.06.2017	Ami Jinendra Shah	TDS	913010013762191	6,11,000/-

The copy of the Bank statement of Ms. Ami J. Shah has also been provided which clearly shows that the payments were made by her. This is the inquiry which the Ld. AO should have done, but failed to do.

7.6.5 In my considered opinion, since the appellant was only the co-owner of the flat alongwith his wife, the appellant was required to explain the nature and source of investment made only by him. The appellant could not be expected to explain the nature and source of investment made by the other co-owner. Once it is established that the payment was made by the other co-owner through the banking channels, any addition in the hands of the appellant will not be justified.

*7.6.6 In view of the above discussion, the source of making investment in immovable property by the appellant has been explained. No addition u/s 69 of the Act was warranted in the facts of the present case. Therefore, the addition of Rs.1,19,71,580/- to the total income of the appellant is hereby deleted. Therefore, **the ground of appeal no. 4 is allowed.** ”*

22. The ld. DR relied on the order of the AO to submit that the assessee has not properly explained the source for investment in the property.

23. The ld. AR on the other hand submitted that the assessee has provided the source for the entire purchase cost including the expenses which have not been properly appreciated by the AO. In this regard, the ld. AR drew our attention to the bank statements of the wife to substantiate the claim that the payments towards stamp duty and other expenses have been funded by the wife (page 276 of PB). Accordingly the ld. AR submitted that the AO is not correct in treating the purchase cost paid by the wife as unexplained in the hands of the assessee.

24. We heard the parties and perused the material on record. During the course of hearing the ld AR took us through various documentary evidences to substantiate that the addition made by the AO as unexplained is actually paid by

Smt.Ami Jinendra Shah since the property is jointly purchased. From the perusal of the findings of the CIT(A) as extracted above, we notice that the CIT(A) has examined these evidences and has given relief to the assessee accordingly. Accordingly we are not inclined to interfere with the decision of the CIT(A) in deleting the addition made by the AO.

25. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26-11-2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai