

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “H” DELHI**
**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1343/Del/2021
Assessment Year 2017-18

DCIT Central Circle Ghaziabad	Vs.	Subhash Tyagi Prop. M/s. Krishna Construction H.No. 66, Golden Avenue-III Roorkee Road, Meerut
TAN/PAN: AGVPT9394H (Appellant)		(Respondent)

Applicant by:	Sh.Sanjay Pandey, CIT-DR & Ms. Sapna Bhatia, CIT-DR
Respondent by:	Sh.Sandeep Sapra, Adv.
Date of hearing:	11.06.2024 & 11.09.2024
Date of pronouncement:	09 12 2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [‘CIT(A)’ in short] dated 30.06.2021 arising from the assessment order dated 21.12.2018 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18.

2. The Grounds of Appeal raised by the Revenue read as under:

“1. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO on account of unexplained investment in purchase of jewellery and submission produced before CIT (A) is after thought

2. On facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition made on account of cash found to the

tune of Rs. 54,68,000/- as the assessee has failed to submit the source of the cash so found during the course of search proceedings.

3. On facts and circumstances of the case and in law, the Ld. CIT(A) failed to allude to the relevant facts & circumstances and misread the facts to arrive at the conclusion.”

3. Briefly stated, the assessee is engaged in the business of contractual work and construction related activities. A search and seizure operation under Section 132 of the Act was conducted on 11.08.2016 at the premises of M/s. Raj Shyama Group of Cases including assessee. The assessee for A.Y. 2017-18 in question e-filed his return of income under Section 139(1) of the Act on 29.09.2017 declaring total income at Rs.63,65,32,490/-. Notices under Sections 143(2) and 142(1) were issued upon the assessee. The assessment was framed under Section 143(3) of the Act. In the assessment order, the AO *inter alia* observed that in the course of search and seizure operation at the premises of the assessee at House No.66 & 67, Golden Avenue – III, Roorkee Road, Meerut jewellery amounting to Rs.93,83,531/- [Rs.72,62,691/- (gold weighing 2687.78 gms)] + Rs. 21,20,840/- (diamond stone) was found. It was submitted by the assessee before the AO that out of jewellery amounting to Rs.93,83,531/-, jewellery amounting to Rs.28,74,250/- has been purchased upto 31.03.2010 and the remaining jewellery has been purchased by the assessee between August, 2010 to November 2014 and the investments have been made out of known sources. The AO in this regard observed that certificates of authenticity issued by Raghunandan Jewellers found and seized in the course of search cannot be regarded as documentary evidence of acquisition of jewellery. The AO granted the benefit of CBDT Instruction No.1916 dated 11.05.1995 and admitted 950 gms gold jewellery *qua* assessee and his family as explained. The AO however treated the excess jewellery of gold weighing 1737.78 gms for a total value of

Rs.46,95,682/- and diamond stone for the total value of Rs.21,20,840/- as on 11.08.2016, i.e., date of search as unexplained jewellery / bullion under Section 69A of the Act.

3.1 The AO further observed that in the course of search / survey operation conducted under Section 132/132A of the Act at the premises of the assessee, total cash amounting to Rs.54,68,000/- was found in aggregate in House No.66 and House No.95 Golden Avenue - III, Roorkee Road, Meerut. The assessee explained before the AO that the cash found in the course of search has been duly accounted for in the books of account and is reflected in the cash in hand at the relevant time. The cash amount was kept to meet day to day requirement on different sites operating in its business. The AO however found that the explanation provided by the assessee is not quite cogent and remains uncorroborated. The AO accordingly invoked Section 69A of the Act and treated the cash found in the course of search amounting to Rs.54,68,000/- as unexplained money in the hands of the assessee.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) took note of the written submissions and the evidences furnished and found merit in the plea of the assessee on both counts. The relevant paragraphs dealing with additions on account of unexplained jewellery are reproduced hereunder:

“8.3 The undersigned has gone through written submission of the assessee and the findings of the AO in the assessment order against which appellant has filed the appeal. The AO has observed that during the search proceedings u/s.132 of IT Act on 11.08.2016 from the premises of House no 66, Golden avenue 3. Rookee road Meerut, jewellery amounting to Rs. 93.83.531/-(Gold weighing 2687.78 grams valuing to Rs. 72,62,691/- and Diamonds valuing Rs 21.20,840/-) was found and when the assessee was asked to explain the source of the same alongwith documentary evidences, the assessee, replied that jewellery amounting to Rs. 28,74.250/- was

purchased upto 31.03 2010 and remaining jewellery has been purchased from August 2010 to November 2014. The AO has mentioned in the assessment order that page no. 1 to 49 were found and seized during the search, which are certificates of authenticity of the jewellery found from the premises of the assessee, issued by Raghunandan Jewellers, Abu Plaza, Meerut. He has further observed that in these certificates of authenticity, the date of estimation, details of jewellery and estimated value of jewellery is mentioned but assessee failed to furnish the bills of the jewellery and hence the same was considered to have been purchased in this year only from unexplained sources

8.4 In the written submission the AR has submitted that the certificates of authenticity are issued by the Jewellers only when the same are actually purchased The AR has submitted date wise details of purchase of Jewellery alongwith capital account of the assessee to prove the source of the purchase of the jewellery In the submission of the assessee date wise details of capital accounts and copies of cashbooks are also furnished. Apart from certificates of authenticity. the AR has furnished the actual bills pertaining to the jewellery, which was purchased from 2010 to 2015 however in case of the jewellery which was purchased before 31:03.2010 amounting to Rs. 28,74,250/-, the AR has submitted that the certificates of authenticity clearly indicate the date of purchase, product code, gold/diamond weight and value of the same. it has further been submitted that the AO was at liberty to examine these evidences, which were found during the search itself, if at all he had some doubt but inspite of clear evidences explaining the source and time of purchase of these items. the AO has considered the same as unexplained money and hence deemed income u/s 69A of IT Act.

8.5 I have carefully perused the findings of the AO and the submission of the AR. The AO in the assessment order has categorically observed that during search proceedings, certificates of authenticity have been found and the same have been marked as page no. 1 to 49 and seized. These certificates of authenticity have been issued by Raghunandan Jewellers, Abu Plaza Meerut. In this regard it is observed that if there had been doubt in the minds of the search team members or later on in the mind of the AO relating to the authenticity of these certificates, they would have conducted further inquiries to ascertain the same. The documents which have been found during the search cannot be denied Further, the AR has furnished date wise capital account and cash book from which source of purchase of the jewellery could have been verified by the AO. Further in the matter of jewellery purchased after 31.03.2010, the AR has furnished the actual bills of all jewellery which is placed in the paper book from page no 51 to 80. From all these details i.e. the certificates of authenticity issued by Jeweller

Raghumandan Jewellers, Abu Plaza, Meerut, it is clear that the jewellery was purchased in the concerned year and not in this year, in which the AO has concluded the same to have been purchased and considers the same as deemed income u/s 69A of IT Act. The explanation offered by the assessee in the form of source by furnishing the dates, withdrawal of amount, capital account of all concerned years has not been taken into consideration by the AO and it has been concluded that the items were from unexplained sources. This conclusion of the AO has not been found correct and hence in the light of these facts. The contention of the AR is accepted and the source of purchase of the jewellery found from the residential premises of the assessee is considered as explained and the addition of Rs. 68,16,522/- made on account of unexplained jewellery u/s 69A of IT Act is hereby deleted and the relief is allowed to the assessee on this ground.”

5. The relevant operative paragraphs with reference to additions on account of cash balance are reproduced hereunder:

“9.3 In the assessment order the AO has mentioned that during the search/survey proceedings cash of Rs. 36,80,000/- was found from House no. 66, Golden Avenue-III, Roorkee road Meerut and Rs. 17,88,000/- was found from House no. 95 Golden Avenue-III, Roorkee Road Meerut. The AO has mentioned that during the assessment proceedings the assessee has stated that the cash amount of Rs. 36,80,000/- had meant to be sent at different sites to meet out the daily expenses. He further stated that he has to maintain high balance of cash in hand because cash is to be sent at different sites in imprest account. However the AO did not accept this contention with an observation that documentary evidence, which can prove that cash amounting to Rs. 36,80,000/- has been recorded by the assessee in his books of account, could not be produced. The AO has further observed that the assessee also could not give any cogent explanation/ reply/documentary evidence in respect of cash amounting to Rs.17,88,000/- found during the survey u/s 133A of IT Act at House no. 95 Golden Avenue-III Roorkee road Meerut.

9.4 The Lal AR has submitted that the cash amounting to Rs 36,80,000/- found during the search and seized u/s 132 of Act from House no. 66, Golden Avenue-III, Roorkee Road, Meerut and cash amounting to Rs 17,88,000/- found during survey from House no. 95 Golden Avenue-III Roorkee Road, Meerut have been duly accounted for and are reflected in books of account. And as evidence of the same copy of cash book from 09.08.2016 to 12.08.2016 justify the amount of cash balance has been furnished, In the same cash balance of Rs. 54,68,694/- is shown. The AR has submitted that the cash book clearly justifies both

these amounts of Rs. 36,80,000/- & Rs. 17,88,000/- and therefore the same cannot be considered as unexplained money in the hands of the assessee u/s 69A of IT Act. The AR has submitted that the assessee has huge turn over and substantial income amounting to Rs. 92,77,43,890/-has been declared in AY 2016-17 and Rs. 63.65.32.490/- in A Y. 2017-18, Further it has been submitted that disclosure of income of Rs. 52 crores has been made in F.Y. 2016-17. Looking into the facts of the case, it has been submitted that this amount of the cash found from the premises of the assessee cannot be considered as unexplained when it has been explained for business purposes to be sent to various sites on imprest accounts.

9.5 I have carefully perused the assessment order and submissions of the assessee. From the details filed by the assessee, I find that assessee had sufficient balance to explain the source of the cash which has been found from the premises of the assessee. Therefore, the same cannot be considered as unexplained money u/s. 69A of the Act. Hence, the relief is allowed to the assessee on this ground of appeal.”

6. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

7. The CIT-DR relied upon the assessment order and submitted that relief granted by the CIT(A) is uncalled for in the facts of the case.

8. Per contra, the ld. counsel for the assessee strongly relied upon the submissions made before the CIT(A) and the conclusion drawn thereon by the CIT(A) as reproduced in the first appellate order.

9. We have carefully considered rival submissions and perused the material referred to and relied upon by the respective sides in the course of hearing as per Rule 18(6) of the Income Tax Appellate Tribunal Rules, 1963.

10. The CIT(A) observed that is an undisputed fact that certificate of authenticity was actually found in the course of search and

marked as pages no.1 to 49 of the seized document. It was further observed that certificate of authenticity have been issued by the third party namely, Raghunandan Jewellers. No adverse finding has been recorded by the AO on the sanctity of the certificates. The CIT(A) also took note of the capital account and cash books and in the light of the substantive withdrawal and availability of cash, the plea of the assessee towards source of purchases of the jewellery was found to be meritorious. Actual bills of jewellery purchased after 31.03.2010 were also perused, the authenticity certificate and the purchase bills combinedly convinced the CIT(A) towards lack of justification in the additions made under Section 69A of the Act. The CIT(A) found that the explanation offered by the assessee towards source of such jewellery to be satisfactory in the light of the withdrawals made etc.

11. We find the process of reasoning adopted by the CIT(A) while granting relief to be quite satisfactory. In the light of evidences available in the course of search and post search, the assessee, to our mind, has sufficiently explained the source of investment in jewellery. We thus see no error in the action taken by the CIT(A). Hence, we decline to interfere therewith.

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

13. We now advert to the second issue towards additions on account of cash found in the course of search. The CIT(A) appears to have been analyzed the submissions made on behalf of the assessee and the cash in hand reflected in the books of account. The CIT(A) found valid reason for holding high balance of cash in hand considering the nature of business and various sites of construction involved. Having regard to huge turnover and substantial income returned year after year, the CIT(A) found that the impugned cash

found in the course of search cannot be treated as unexplained.

14. On perusal of the facts noted by the CIT(A), the explanation offered by the assessee towards source of cash appears to be clinching. There does not appear to be any justification to reject the explanation of the assessee on suspicions and conjectures. Having regard to the huge turnover and the nature of business, the cash found appears to be the need of the business and is also corroborated by the cash book maintained for this purpose. We thus see no justifiable reason to dislodge the action of the CIT(A). We thus decline to interfere.

15. Ground No.2 of the Revenue's Appeal thus stands dismissed.

16. Ground No.3 is general and does not call for separate adjudication in the light of the delineations made above. Ground No.3 is thus disposed of as infructuous.

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

Order pronounced in the open Court on 09th December, 2024.

Sd/-

**[SUDHIR KUMAR]
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: 09.12.2024

Prabhat/Amit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar,
ITAT, Delhi