

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, CHENNAI**

**माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं./ ITA No.1661/Chny/2024**  
**(निर्धारण वर्ष / Assessment Year: 2020-21)**

<b>ACIT</b> Central Circle-1, Trichy.	<b>बनाम/ Vs.</b>	<b>M/s. Kongu Thanga Maaligai</b> # 54 & 55, Chinnakadai Street, Trichy-620 002.
स्थायी लेखा सं./जी आइ आर सं./PAN/TAN No. <b>AAFFK-7432-D</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Revenue by</b>	:	Shri Nilay Baran Som (CIT) -Ld. Sr. DR
प्रत्यर्थीकी ओरसे/ <b>Assessee by</b>	:	Shri M.K. Rangasamy (CA) – Ld. AR

सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	02-01-2025
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	24-02-2025

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year (AY) 2020-21 arises out of the order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 05-04-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 23-09-2021. The grounds taken by the revenue are as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.
- 2 The Ld. CIT(A) erred in deleting the addition of Rs.6,34,81,797/- made u/s.69A towards excess stock of gold and silver found during the survey
- 2.1 The Ld.CIT(A) failed to appreciate that the assessee had not maintained any stock register clearly indicating the quantity with cost price, the date of receipt etc

and it had not produced item wise stock list either during the assessment proceedings or appellate proceedings.

2.2 The CIT(A) failed to appreciate that the assessee was not able to produce the bills for purchase on the date of survey. Subsequently the assessee produced 10 bills claiming that jewellery of 8512.059 gms were received from 10 suppliers and they have been reported in the GST returns. The assessee had not produced GST returns during the assessment proceedings. The CIT(A) observed that this issue could have been cross verified by the AO. But the CIT(A), without mentioning whether the GST returns are verified at his end, has given relief to the assessee. The CIT(A) ought to have called for remand report from the assessee for verification of claim of the assessee regarding purchases and gold given for job work.

2.3 The CIT(A) failed to appreciate that the assessee declared additional income of Rs.2,01,36,732/- and paid tax at normal rates. Since the assessee has not satisfactorily explained the source for excess gold and silver, the same ought to have been brought to tax u/s. 69 of the Act and to be taxed at special rates as per the provision of Sec.115BBE. Further, in the return of income, the assessee himself offered Rs.2,01,36,732/- under the head 14(x)-Any other income as "Credit in Partner's account income u/s.68 of the Act". The CIT(A) failed to appreciate that once the income is offered u/s.68 and the same is to be taxed at higher rates as per the provisions of 115BBE.

3 The Id. CIT(A) erred in deleting the addition of Rs.38,05,203/- made u/s.69A towards cash found during the course of survey.

3.1 The Ld. CIT(A) failed to appreciate that the Managing partner of the assessee firm admitted in his sworn statement that he had no explanation for the cash found and agreed to offer the same as receipts from unaccounted sales. But subsequent to survey he stated that Rs.38,00,000/- represents advance payment made by a customer for purchase of jewellery. But in the cash book produced during the assessment proceedings, it was shown as receipts from 25 customers in round sums not exceeding the limits prescribed in Sec.269ST. The contradictory statements of Managing partner proved that the explanation provided by assessee is an afterthought.

3.2 The Ld.CIT(A) failed to appreciate that if such huge advance was actually received by the assessee firm on 16/02/2020 previous day, the same would have been mentioned in the sworn statement recorded on 17/02/2020 (ie) the date of survey.

As is evident, the subject matter of appeal is additions made by Ld. AO based on survey proceedings which have been deleted by Ld. CIT(A).

2. The Ld. CIT-DR advanced argument supporting the order of Ld. AO whereas Ld. AR referred to the findings of Ld. CIT(A) in the impugned order. The attention has been drawn to various documents as placed in record in the paper-book. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident firm is stated to be engaged in trading of gold,

diamond and silver jewellery. The assessee filed return of income on 13-01-2021 admitting income of Rs.604.31 Lacs which was subjected to scrutiny assessment.

### **Assessment Proceedings**

3.1 The assessee was subjected to survey action u/s 133A on 17-02-2020 wherein physical stock of jewellery was taken and certain books and documents were impounded. The physical stock of Gold was taken to be 78143.513 grams as against book stock of 62452.936 grams leaving a difference in stock of gold for 15690.575 grams. Similarly, physical stock of silver was found in excess by 47015 grams.

3.2 The Managing Partner Shri R. Ramesh, in statement recorded on 17-02-2020, admitted the discrepancy but stated that the difference of gold was explainable by way of job orders for goods received and pending purchase bills received which were in hand as well as receivable but the same remained to be recorded in the books of account. The difference in stock of silver could not be explained and the same was offered as unaccounted purchases. On 19-02-2020, certain bills were furnished for purchase of gold for 8512.059 grams along with confirmation of the vendors. However, Ld. AO observed that these bills were not available at the time of survey nor the purchases were found recorded in the books at the time of survey. Therefore, these bills could not be accepted. Accordingly, the value of excess stock of gold for Rs.616.01 Lacs (15690.575 grams x Rs.3926/- per gram) was proposed to be added. The addition on account of Silver was proposed for Rs.18.80 Lacs (47015 grams x Rs.40/- per gram). Finally, Ld. AO made addition of Rs.634.81 Lacs u/s 69A of the Act.

3.3 There was excess physical cash of Rs.62.56 Lacs. The Managing Partner stated that the cash book does not include cash sale of 16<sup>th</sup> and 17<sup>th</sup> February, 2020. If these are considered, the excess cash would be Rs.38.05 Lacs only. Subsequently, during the course of assessment proceedings, it was stated that the amount of Rs.38 Lacs represent advanced payment made by customers for purchase of Jewellery. However, rejecting the same, Ld. AO made addition of Rs.38.05 Lacs u/s 69A. Aggrieved as aforesaid, the assessee preferred further appeal before Ld. CIT(A).

### **Appellate Proceedings**

4.1 During appellate proceedings, the assessee furnished elaborate written submissions and various documents to assail the impugned addition. The same has already been extracted in the impugned order. The assessee reconciled the physical stock of Gold as under: -

Excess stock of Gold quantified during the course of survey	15690.575
Less: Bills for purchase of gold jewellery on credit (stock received prior to survey but not billed due to pending communication of confirmation to the suppliers). Total number of bills 10. Out of these 5 bills were produced on the date of survey and the balances were submitted during post survey proceedings. The total weight of such purchase of Gold.	8512.059
Balance	7178.516
Less – Gold supplied by the appellant firm for making jewellery, bills produced during the course of survey (2 Bills)	2655.390
Balance	4523.126
Less: Balance quantity admitted by the appellant during the course of survey	4523.121
Less: Rounding of difference	0.005
Difference in stock	NIL

It was pleaded that Ld. AO completely ignored the evidences filed by the assessee. The Ld. AO also ignored additional income admitted by the assessee for Rs.201.36 Lacs in the return of income. The assessee made available the copies of Job work bills, evidences for receipt of new

jewellery in lieu of old jewellery after remaking and relevant ledger account and also the copies of sales bills and confirmation letters from suppliers. In respect of Silver, the assessee stated that it already admitted the same and disclosed the value of Rs.23.78 Lacs in the return of income as filed by the assessee.

4.2 The Ld. CIT(A) concurred that Ld. AO simply rejected the evidences for the reasons that the same were not available during the course of survey. However, Ld. AO did not make any attempt to disprove the evidences furnished by the assessee. No enquiries were conducted, whatsoever, to establish that the evidences were not genuineness. When the supplier and manufacturer of jewellery were assessed to GST and Income Tax, the issue could have been cross-verified but Ld. AO did not make any such attempt. The Ld. CIT(A) also rendered a finding that the assessee admitted value of excess quantity of stock of gold amounting to Rs.177.57 Lacs (for 4523.121 grams of gold) and Rs.23.78 Lacs (for 47015 grams of Silver). The two aggregated to Rs.201.36 Lacs. The assessee admitted income of Rs.604.31 Lacs after including the amount of Rs.201.36 Lacs. The assessee also paid advance tax of Rs.50 Lacs on 19-02-2020 as admitted in the sworn statement. The Ld. AO did not consider the additional income as offered by the assessee and made the impugned addition in a mechanical way. Therefore, the impugned addition was deleted. The excess stock as offered by the assessee was to be considered as 'business income' as per the decision of **DCIT vs. Ramnarayan Birla (ITA No.482/JP/2015 dated 30-09-2016)**. The Ld. AO could not dislodge the contention that the excess stock was in the nature of business income of the assessee. The excess stock unearthed during the course of survey formed part of unaccounted

business income only and therefore, such income was to be assessed as business income only. Aggrieved, the revenue is in further appeal before us.

4.3 On the issue of excess cash, the attention was drawn to the fact the excess cash represents cash collected from group of persons who earlier ordered for the jewellery and collected the jewellery after payment of money during late hours of 16-02-2020 but agreed to collect bill at a later date as they were in a hurry to attend the marriage function. The same was supposed to record as sales in the books of the assessee on 17-02-2020 which was not done due to commencement of survey in the morning of 17-02-2020. In support, the assessee produced copies of day book and ledger folio of sales for the period from 17-02-2020 to 18-02-2020.

4.4 The Ld. CIT(A) noted that the survey u/s 133A was carried out on 17-02-2020. The Managing Partner, in the statement recorded on 19-02-2020, was able to explain the excess cash found during the course of survey. In this regard, the assessee was able to furnish the list of persons from whom the amount was received by way of advance and relevant tax invoices issued on 18-02-2020. The sales were duly taken into the account as sales turnover. The AO, without making any enquiry upon the evidences furnished by the assessee and without proving that the evidences furnished were not genuine, arrived at a conclusion by making a finding that the evidences lacked merit. However, the findings were not based on any enquiry. The assessee was able to furnish the evidence within one day of the date of survey in the statement recorded before the officer and therefore, the same could not be rejected as an afterthought. In the same statement, the assessee admitted the value of

excess stock amounting to Rs.201.36 Lacs which was also not considered by Ld. AO. In fact, the statement was not considered by Ld. AO at all. Therefore, the impugned addition of Rs.38.05 Lacs was deleted against which the revenue is in further appeal before us.

### **Our findings and adjudication**

5. From the facts, it emerges that during the course of survey u/s 133A on 17-02-2020, physical stock of gold and jewellery was found in excess. In the recorded statement, it was stated by managing partner that difference of gold was explainable by way of job orders for goods received and pending purchase bills which were received and receivable but not yet recorded in the books of account. After two days, i.e., on 19-02-2020, the assessee furnished certain purchase bills for purchase of gold for 8512.059 grams along with confirmation of the vendors. The suppliers were duly registered under GST and the sales were duly evidenced by the sales invoices. The same also corroborate the statement made by managing partner during survey. However, Ld. AO chose not to verify the same and simply rejected the claim of the assessee and made impugned addition in a mechanical way. The addition of excess cash for Rs.38.05 Lacs was also made in similar manner without making any verification from the customers.

6. During appellate proceedings, the assessee duly reconciled the physical stock as tabulated in preceding para 4.1. The un-reconciled quantity of gold was arrived at 4523.121 grams which was offered as additional income. Similar additional income was also offered for discrepancy in silver stock. The Ld. AO completely overlooked the said declaration made by the assessee in the return of income. As rightly held by Ld. CIT(A), Ld. AO completely ignored the evidences filed by the

assessee. The assessee made available the copies of Job work bills, evidences for receipt of new jewellery in lieu of old jewellery after remaking and relevant ledger account and also the copies of sales bills and confirmation letters from suppliers. However, no attempt was made to disprove these evidences. In the absence of any finding rebutting the evidences as furnished by the assessee, the impugned addition of excess stock has rightly been deleted by Ld. CIT(A). We also concur that the additional income as offered by the assessee would be assessable as 'business income' only since it is the only source of income for the assessee. Further, the excess stock forms part of trading operations of assessee's business. The Ld. CIT(A) has correctly adjudicated this issue.

7. On the issue of excess cash also, we find that the assessee had furnished list of parties from whom advances were received and sales were made to them subsequently after the date of survey. These sales form part of assessee's sales turnover and already been offered to tax. In such a case, the same could not be added again as the income of the assessee. In support, the assessee had already furnished copies of day book and ledger folio of sales for the period from 17-02-2020 to 18-02-2020. The AO, without making any enquiry, concluded that the evidences lacked merit which is unjustified. The assessee has duly substantiated its claim of source of cash. Therefore, this addition has rightly been deleted by Ld. CIT(A). We order so.

8. The appeal stands dismissed.

*Order pronounced on 24<sup>th</sup> February, 2025*

**Sd/-**  
**(ABY T. VARKEY)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :24-02-2025  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Madurai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF