

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.14/Nag./2023
(Assessment Year : 2015-16)

Dy. Commissioner of Income Tax
Central Circle-2(2), Nagpur Appellant

v/s

M/s. Karan Kothari Jewellers Pvt. Ltd.
475, Kothari Bhawan, Naik Lane
Itwari, Nagpur 440 001 Respondent
PAN - AACCK3221C

Assessee by : Shri Hitesh P. Shah
Revenue by : Shri Sandipkumar Salunke

Date of Hearing - 17/02/2025

Date of Order - 21/03/2025

ORDER

PER K.M. ROY, A.M.

Captioned appeal by the assessee is emanating from the impugned order dated 04/11/2022, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2015-16.

2. This is a case of Third Member.

3. On account of cleavage of opinion between the Members constituting Division Bench, the Hon'ble President, had appointed the Hon'ble Vice President, Pune Zone, to decide the following questions, as per the provisions of section 255(4) of the Income Tax Act, 1961 (*"the Act"*):-

"Whether, in the facts and circumstances of the case, the learned CIT(A) impugned lower appellate discussion, has not adjudicated the assessee's first

and foremost substantive ground raising the issue of reopening u/s. 148; and therefore, it violates the rigor of section 250(6) of the Act?

2. Whether, in the facts and circumstances of the case, the learned CIT(A) impugned lower appellate findings in paras 5 to 5.1 rejecting assessee's first ground as "general in nature", deserve to be set aside for his fresh appropriate adjudication, or not?

4. The Learned Accountant Member remanded the matter to the file of the learned CIT(A) on the ground that, instead of adjudicating the legal ground raised before the Learned Accountant Member, he dismissed the same as general in nature and, therefore, the Learned Accountant Member directed the learned CIT(A) to pass a speaking order on the issue of the legal ground raised before him.

5. On the other hand, the Learned Judicial Member dismissed the appeal of the Revenue on the ground that the Department has assessed the assessee's related parties on substantive basis in the various jurisdictions and thereafter, initiated proceedings under section 147 in assessee's case on protective basis, once the foregoing substantive addition stood deleted. Such a course of action was not available to the Departmental Authorities as per the various decisions cited by the Learned Judicial Member in his dissenting order. Even otherwise also, the Learned Judicial Member held that the assessee has explained the source of such jewellery amounting to ₹ 3,89,46,525. According to him, the Assessing Officer has to proceed with its due diligence at the same time than postponing the 'protective' assessment so as to wait for the final outcome of the substantive assessment. Learned Judicial Member accordingly dismissed the grounds raised by the Revenue on this issue.

6. The Hon'ble Vice President, Pune Zone, vide its order dated 08/01/2025, had given his decision as Third Member, which concludes as under:-

"10. I have carefully perused the record and gone through the orders of both the Hon'ble Members. It is an admitted fact that the Ld. CIT(A) deleted the addition made by the Assessing Officer on merit and dismissed the grounds challenging the validity of re-assessment proceedings treating the same as general in nature. I find neither the assessee nor the Revenue have come up before the Tribunal on the issue of non-adjudication of the legal ground although the Revenue filed the appeal challenging the deletion of addition made by the Assessing Officer u/s 69A of the Act. Under these circumstances, there was no reason for the Hon'ble Accountant Member to restore the issue to the file of the Ld. CIT(A) with a direction to adjudicate the grounds challenging the validity of re-assessment proceedings. Further, both the parties fairly conceded that there is no such ground raised by the Revenue or any Cross Objection by the assessee challenging the dismissal of the ground challenging the validity of re-assessment proceedings. Under these circumstances, I uphold the order of the Hon'ble Judicial Member. Accordingly the questions referred to me for adjudication are as under:-

- a) The order of Ld. CIT(A) does not violate the rigour of section 250(6) of the IT Act, 1961 for not adjudicating the legal ground raised by the assessee challenging the validity of re-assessment u/s 148.*
- b) The order of Ld. CIT(A) need not be set aside for rejecting the assessee's legal ground as general in nature.*

7. Keeping in line with the directions of the Hon'ble Third Member, wherein he has accepted the conclusion of the Learned Judicial Member, the appeal of the Revenue is not sustainable in the eyes of law.

8. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 21/03/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/03/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur