

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "एस एम सी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2055/दिल्ली/2023 (नि.व. 2009-10)  
ITA No.2055/DEL/2023 (A.Y.2009-10)

Mrs Sharda Rani Gupta,  
L/H Late Hem Chand Gupta  
C/o Mr. Sandeep Bhatnagar, C.A,  
Flat No. 12, 2<sup>nd</sup> Floor, Sheel Tara House,  
4866/24, Ansari Road, Darya Ganj,  
New Delhi 110002

PAN: AAKPG-2688-Q

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward 55(4),  
D-Block, Vikas Bhawan, New Delhi 110002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None  
प्रतिवादीद्वारा/ Respondent by : Ms. Shivani Bansal, Sr. DR and  
Shri Om Prakash, Sr. DR

सुनवाई की तिथि/ Date of hearing : 10/01/2025

घोषणा की तिथि/ Date of pronouncement: : 04/04/2025

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 18.04.2023, for assessment year 2009-10.

2. The appeal is time barred by 29 days. The assessee has filed an application seeking condonation of delay in filing of appeal. After perusal of the same, I am satisfied that delay in filing of appeal is not intentional, but was for the reasons

stated in application which appears to be bonafide. Thus, the delay in filing of appeal is condoned and appeal is admitted for hearing on merits.

3. This is second round of litigation before the Tribunal in assessee's case for AY 2009-10. Earlier cross appeals were filed by the Revenue and the assessee in ITA No. 2493/Del/2013 and 2303/del/2013. The Tribunal vide order dated 01.11.2016 allowed the appeal of the assessee for statistical purpose and restored the issues back to the Assessing Officer (AO) for fresh consideration. Consequent, to directions of the Tribunal, the AO vide order dated 30.11.2017 reframed the assessment and made following additions:

(i) Addition u/s. 68 of the Income Tax Act,1961(hereinafter referred to as 'the Act') in respect of unproved creditors;

M/s. Viraj Industries	Rs.11,74,422/-
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M/s. Vaibhav Enterprises	Rs.17,05,799/-
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Total	Rs.28,80,221/-
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(ii) Long Term Capital Gain on sale of jewellery      Rs.89,557/-

4. Aggrieved by the assessment order dated 30.11.2017 passed u/s. 254/143(3) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) upheld the additions and dismissed appeal of the assessee *in toto*. Hence, present appeal by the assessee.

5. The assessee has filed written submission, the relevant is extract of the same is reproduced herein under:-

“1. That the Ld. CIT(A), National faceless appeal centre (NFAC), has erred in upholding the additions made by the AO during assessment proceedings of Rs.17,05,799/- and Rs.11,74,422/- on account of unexplained credit u/s 68 of the Income Tax Act, 1961. That the confirmation of the parties along with Financial Ledgers) of subsequent years) in which payments were made to the above mentioned parties were submitted to Ld. Assessing Officer.

2. That the payment to M/s Vaibhav Enterprises was repaid in April, 2009 through banking channel, which were duly verified by the Ld. Assessing Officer by issuing Notice U/s 133(6) to the bank of the assessee. However Notice u/s 133(6) issued by the Ld. Assessing Officer could not be delivered as insufficient address. However the letter could not be delivered as the Factory was closed due to sealing by Delhi Government. However since the payments were made through banking channel in subsequent year which were verified by the Ld. AO should not be added to the income of the assessee.

3. That the account of M/s Viraj Industries has been reduced to Nil in Financial Year 2011-12. That the assessment of the assessee for Asst. Year 2011-12 was completed under scrutiny and Ld. Assessing Officer had send the Notice U/s 133(6) to M/s Viraj Industries who had submitted the reply and confirmed the outstanding balance due from assessee and accordingly no adverse interference was made. Since the party M/s Viraj Industries had confirmed the balance as at 31% March,2011 relevant to Asst. Year 2011-12, question of non existence / verification for Asst. Year 2009-10 does not arises. Moreover Ld. AO had confirmed the payments made by the assessee to M/s Viraj Industries from the bank(s) itself, still the addition has been made. However Notice u/s 133(6) issued by the Ld. Assessing Officer could not be delivered as Factory Closed. However the letter could not be delivered as the Factory was closed due to sealing by Delhi Government. However since the payments were made through banking channel in subsequent year which were verified by the Ld. AO should not be added to the income of the assessee.

Further vide para 6 & 7 of the assessment order at page 2, the Ld. AO had mentioned that After making further enquiry / investigation, notice u/s 133(6) issued for seeking information from Bank of India, Jheel Kureji & HDFC Bank Shahdara to verify the financial transactions made by the assessee with M/s Vaibhav Enterprises & M/s Viraj Industries. In response to the above, it has been found that the payment were made to M/s Vaibhav Enterprises, prop. Raja Ram Tulsian and another transaction were made through Punjab National Bank, Maya Puri in the account of M/s Viraj Industries under the proprietorship of Shri. Amit Gupta.

Since the Ld. AO had got the verification from the banks which tallies with the account of the assessee, No addition on this ground is warranted. Especially when there is sealing is everywhere and the Industries / Factories are closed due to pollution. Otherwise also assessee should not be penalized for the transactions of almost 9 years old.

4. Reliance is placed on the judicial pronouncement in the case of Smt. Sudha Loyalka vs. ITO, ward 35(2) , ITA No.399/Del/2017 in which it was held that "The very fact these amounts are being

shown as payable in the balance sheet of the assessee go to establish that there was no cessation of liability.

*Further reliance is also placed on the judicial pronouncement in the case of Shri Sandeep Kundalia vs. ITO, Ward 49(1), New Delhi in which it was held that the purchase invoices placed by the assessee are the tax invoices, which can be issued by a VAT registered dealer in respective state. The bank statements of assessee and the sundry creditor show the remittance of part payment against the credit purchases shown by the assessee.*

5. *Since the assessee had proved the identity and genuineness of the transactions with the above mentioned parties, no addition on account of unexplained credit under section 68 is required to be made.*

6. *That the Ld. CIT(A), National faceless appeal centre (NFAC) has erred in upholding the additions made by the AO during assessment proceedings that Ld.AO had applied the prevailing market price of Gold Jewellery as on 31.03.1987 worked out the weight of Jewellery declared by the assessee at 860 gms. Sale price of 860 gms of Jewellery was worked out at Rs.10,08,219/- and after allowing indexed cost of this Jewellery at Rs.9,18,662/-, the LTCG was worked out to Rs.89,557/-. As evident from the assessment records, it was established that the assessee had declared this Jewellery in VDIS,1997 and paid taxes accordingly. During the declaration under VDIS,1997, assessee had clearly declared that the Jewellery pertains to asst. Year 1972-73 and 1986-87, which was accepted by the Ld. AO and also by Ld. CIT(A) at the time of original assessment. Since during the original assessment proceedings and the present assessment proceedings, The Ld. AO had taken the cost of acquisition as on 31.03.1987, the resultant Long Term Capital Gain has arisen whereas assessee had declared the Long Term Capital Loss in the ITR.*

7. *This is to draw your kind attention to the fact that as per VDIS,1997 scheme any person can declare any asset which were not declared in earlier year by stating the year of purchase and has to pay the tax as on the value as on date. Accordingly assessee had also declared his undeclared Jewellery which were received by him in the Asst. Year 1972-73 and 1986-87, accordingly the cost of acquisition of Jewellery should be taken as the year of acquisition of Asst. Year 1972-73 and 1986-87 and indexed rate(s) should be applied accordingly. Since there is no basis on which cost of acquisition should be taken for the Asst. Year 1986-87, no additions on account of Long Term Capital Gains is sustainable.”*

6. Per contra, Ms. Shivani Bansal representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. DR submits that the assessee has failed to prove creditworthiness and identity of the creditors, and genuineness of the transaction with M/s. Vaibhav Enterprises and M/s. Viraj Industries. Hence, the amounts received from the

aforesaid parties were added u/s. 68 of the Act. With regard to Long Term Capital Gain on sale of jewellery, the Id. DR submits that the assessee had declared gold jewellery under VDIS 1997, 860 grams. Whereas, in the impugned assessment year, the assessee has sold gold jewellery to the extent of 1276 grams. The AO has added the difference in the weight i.e. gold jewellery declared under VDIS 1997 and gold jewellery sold.

7. Submissions made by Id. DR heard, written submissions on behalf of the assessee perused, orders of the authorities below examined and the documents placed on record by the assessee considered. The AO has made addition u/s. 68 of the Act in respect of unproved creditors i.e. M/s. Vaibhav Enterprises and M/s. Viraj Industries. The Assessing Officer had issued notice u/s. 133(6) of the Act to the aforesaid parties to ascertain genuineness of the transaction to verify creditworthiness and identity of the creditors. There was no response to the notices issued by the AO u/s. 133(6) of the Act. Hence, the AO made addition of unverified sundry creditors. The contention of the assessee is that the assessee has repaid M/s. Vaibhav Enterprises in April 2009 through banking channel and the same has been verified by the AO by issuing notice u/s. 133(6) of the Act to the banks. The notice u/s. 133(6) of the Act issued to Vaibhav Enterprises was not served as the factory was closed due to sealing by the Delhi Govt. I find that except for oral assertions no documentary evidence has been placed on record by the assessee to substantiate creditworthiness of the creditors and genuineness of the transaction. The onus to prove creditworthiness and identity of the creditors is on the assessee. The assessee has failed to discharge the same. Hence, addition of Rs.17,05,799/- is upheld.

8. With regard to M/s. Viraj Industries, the submissions of the assessee are that the entire amount has been repaid in Financial Year 2011-12. The AO while completing assessment for AY 2011-12 had issued notice u/s. 133(6) of the Act to M/s. Viraj Industries. M/s. Viraj Industries in reply to notice confirmed that the outstanding debit balances as on 31.03.2011 relevant to AY 2011-12 is Rs. 3,00,002/-. Once the AO in subsequent assessment year i.e. AY 2011-12 has accepted the creditors and transactions as genuine, there is no question of disallowing the same in the impugned assessment year. The assessee has placed on record copy of assessment order dated 27.03.2014 for AY 2011-12, as well as copy of notice dated 21.02.2014 issued u/s. 133(6) of the Act to M/s. Viraj Industries and copy of confirmation by Viraj Industries. In light of material available on record, addition of Rs.11,74,422/- is directed to be deleted.

9. As regards capital gains on sale of gold jewellery is concerned, the AO has made addition of the difference in the value of gold jewellery declared under VDIS 1997, and the gold jewellery sold during the relevant assessment year. The assessee had declared gold jewellery of 860 grams under VDIS 1997, whereas, in impugned assessment year the assessee has sold gold jewellery to the extent of 1276 grams. Thus, the AO has made addition of the excess gold jewellery sold by the assessee i.e. 416.06 grams. The contention of the assessee is that the jewellery was purchased by the assessee in the year 1972-73 and 1986-87. The AO had taken cost of acquisition as on 31.03.1987 which has resulted in capital gain, whereas, the assessee has declared Long Term Capital Loss on gold jewellery. I do not find any error in the computation of Long Term Capital Gains on the sale of gold jewellery, hence, no interference with the findings of the AO/CIT(A) on this issue is called for. Hence, this ground of appeal is dismissed.

10. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Friday the 04<sup>th</sup> day April, 2025.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 04.04.2025

NV/-

**प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI