**IN THE INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH, JODHPUR.**

**BEFORE: DR. MITHA LAL MEENA, ACCOUNTANT MEMBER &**

**DR. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**I.T.A. No. 428 & 429/Jodh/2025**
**Assessment Year: 2014-15 & 2016-17**

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| Ochhab Lal Jain<br>10, Shahi Complex,<br>Hiran Magri, Sec.-11, Udaipur. | Vs. | The DCIT<br>Central Circle-1<br>Udaipur. |
| PAN/GIR No.: AKUPJ5708Q | | |
| Appellant | | Respondent |

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| **Appellant by** | Sh. Shrawan Kumar Gupta, Adv. |
| **Respondent by** | Sh. Sanjay Dhariwal, CIT-DR |

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| **Date of Hearing** | 06/05/2025 |
| **Date of Pronouncement** | 29/05/2025 |

## ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

The assessee has filed these two appeals challenging the impugned orders dated 28.02.2025, passed by the learned Commissioner of Income Tax (Appeals), Udaipur-2 [ in short *ld. CIT(A)*], for the assessment year 2014-15 & 2016-17, respectively. The said order of the ld. CIT(A) arise against the order dated 09.06.2021& 15-06-2021, passed under section 143(3) r.w.s. 153A of the

Income Tax Act, 1961 [for short Act ] by ACIT, Central Circle-1, Udaipur [ for short AO].

2. Succinctly, the fact as culled out from the records is that a search & seizure operation under section 132(1) of the Act was carried out on 03.01.2019 at the various premises of 'Rajawat Group, Udaipur' to which the assessee belongs, and his case was covered in that search. Assessee is an individual and his status during the year was NRI and he derived Interest income, which was disclosed by him under the head 'Income from other sources'.

2.1 The issue for both the assessment years involved being the same, the case pertaining to AY 2014-15 is being taken as the lead case. Pursuant to search action, notice u/s 153A of the Act was issued to the assessee on 17.01.2020 which was duly served. In response to notice issued u/s 153A, the assessee furnished his return of income on 29.01.2020, declaring total income of Rs.13,30,800/-. Earlier, the assessee had filed his return of income u/s 139(1) of the Act on 01.10.2015declaringthe same total income, i.e. Rs.13,30,800/-

2.2 Ld. AO noted that during the course of search action u/s 132 of Act at the residence of the assessee, a MIRAJ notebook was found and seized containing 18 written pages which was inventorized as Exhibit-3 of Annexure-A. The assessee in his statements recorded u/s 132(4) stated that the notebook contains details of cash loan given by him to various persons during FY 2015-16 to 2017-18.

2.3 On the basis of the said note book, the AO worked out financial year wise loans given and interest earned thereon. For the relevant year, the amount of loan was worked out as Rs.7,00,000/- and interest earned as Rs.65,000/- The assessee offered an explanation which did not find favor with the AO and he went on to add these amounts to the returned income of the assessee. Aggrieved from the order of Assessing Officer, the assessee preferred an appeal before the CIT(A) challenging the additions made by the AO. The assessee pleaded before the CIT (A) thatthe money was advanced by Ochhab Lal Jain HUF and not by him in his individual capacity, and the source of money advanced this year was out of loans received back which had been advanced in earlier years and were available with HUF. He provided supporting evidence.

2.4 While disposing off the appeal, the CIT(A) held that the money advanced belonged to the assessee and not to the HUF. He deleted the addition of Rs.7,00,000/-. However, he sustained the addition in respect of interest of Rs.65,000/-Simultaneously, he enhanced the income for the year by Rs.58,06,500/- by holding that 150 kg silver was acquired by the assessee during FY 2013-14.

2.5 During the appellate proceedings for the year, the ld.CIT(A) on the basis of facts which came to fore during the appellate proceedings of AY 2019-20 which were going on simultaneously, issued a notice for enhancement. For AY 2019-20, the AO had made an addition of Rs.1,16,13,000/- u/s 69A in respect of 300 kg

silver found from the lockers in the name of assessee& others during the course of search in January, 2019. The CIT(A) deleted this addition of Rs.1,16,13,000/- made by the AO in AY 2019-20, but was of the view that silver found and seized from the lockers had been acquired during two financial years and should have been taxed in those years, and he, accordingly issued notices for enhancement for AY 2014-15 and AY 2016-17.Simultaneously, he enhanced the income for both these AYs by Rs.58,06,500/- each, holding that 150 kg silver in each of these years was acquired by the assessee.

3. Now the assessee is in appeal before the ITAT. He has raised the following grounds of appeal in ITA No.428/JODH/2025, for AY 2014-15. -

> "1. The impugned order u/s153A of the I.T.Act, 1961 dated 09.06.2021 as well as the action taken and notices u/s 153A or 143(2) or other notices are illegal, bad in law and on facts of the case for want of jurisdiction and various other reasons or barred by limitation and further contrary to the real facts of the case, hence the same may kindly be quashed.
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> 1.2 the search action taken u/s132 and consequent proceeding are illegal, bad in law and on the pets of the case for want of jurisdiction and various other reasons, against the provisions and procedures as per law and further contrary to the real facts of the case, hence all the consequent notices as well as the subsequent proceeding are invalid, illegal and bad in law and hence liable to be quashed.
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> 2. The Ld.CIT(A) has grossly erred in law as well as on facts of the case in making the enhancement of the income of the assessee during the year by making an addition of Rs.58,06,500/- own account of silver of 150kg found in lockerNo.299 of OBC during the search in the AY 2019-20, also erred for the reason that the same was not subject matter before theld.AO during the AY 2014-15, also erred in enhancing the income without issuing a proper show Cause Notice. Also erred in ignoring the facts that silver is parental property and belongs to brother's families, also erred ignoring the other material, evidence and facts available on record. Hence, the enhancement as well as the addition so made by the ld.CIT(A) is also contrary to the real facts of the case and not according to

the provisions of law, illegal, invalid and bad in law, hence the same may kindly be deleted in full."

4. The assessee has filed a common written submission which is as under: –

**"1. Firstly, your honor in the above matters there are 2 appeals for A.Y. 2014- 15 and 2016-17 ITA NOS. 428 & 429/Jodh/2025 respectively.** The Assessments were completed u/s 153A r.w.s. 143(3).Your honor firstly we relying upon our WS for A.Y. 2019-20(PB22-35), and comments on the remand report available in the paper book(PB57-71). Hence for the facts, figures, submissions and legal position the same may kindly be considered as our WS before your honor. As in both the appeals, the Grounds of appeal are same, we are submitting a common submission on the enhancement and observations given by the ld. CIT(A) ground wise as under:

**2. Wrong enhancement and additions in these year by the ld. CIT(A):** Atthe very outset itissubmitted that the ld. CIT(A) exceeded his powers, in as much as he has enhanced the income in the years in which there was no issue of silver and no subject matter in the assessment orders of these years. The ld. CIT(A) can enhance the income only in the A.Y. in which the subject matter or issue of assessment is before him not of the other years or issue which is not the of subject matter of assessment before him. As the ld. AO neither in assessment order nor in the remand report has stated about the additions of Silver in the A.Y. 2014-15 and 2016-17, then how the ld. CIT(A) can make the enhancement in these year when the assessment of the related issue is not before him. As the Section 251(1)(a) itself provides

**251.** (1) In disposing of an appeal, the [29][* * *] [30][Commissioner (Appeals)] shall have the following powers—

(*a*) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment[33] [34][* * *];

And in the A.Y. 2014-15 and 2016-17 the assessee has not filed the appeal before the ld. CIT(A) related to assessment against the addition/issue of silver rather he filed the appeal related to assessment against the addition/issue of alleged undisclosed cash loan of Rs.5,00,000/- and Rs.7,65,000/- respectively given which have been deleted vide page 23 of the CIT(A) order.

Hence, the ld. CIT(A) ought to have confined enhancement only in the years where the subject matter or related issue involved in those year before him not of the other years i.ePower of enhancement conferred on CIT(A) can be exercised only on the issue which is the subject matter of the assessment. The CIT (Appeals), even while exercising its power for enhancement u/s. 251, cannot bring a new source of income which was not subject matter of assessment.

Kindly refer **DCIT vs. FIREFLY MARKET RESEACH INDIA PVT. LTD.** ITA No.4184/MUM/2024 December 9, 2024 (2024) 72 CCH 0260 Mum Trib

**BHURAMAL RAJMAL SURANA & SONS PVT. LTD. vs. ACIT** ITA No. 254/JP/2023 July 17, 2023 (2023) 68 CCH 0553 Jaipur Trib (2023) 225 TTJ 0122 (Jp)

**3. Correct Facts and material not considered as silver belonged to all members of HUF:** It is submitted that we had filed the detailed written submissions to CIT(A) in this regard vide page 15 to 20 (PB86-92) also (PB22-34) which may kindly be considered here also before your honor.

**4.** The ld. CIT(A) has ignored the above submissions and wrongly enhanced our income, by observing are as under-

**4.1**The affidavits of relatives are not verifiable evidences as relatives are influenced by the assessee and consider the request made by the assessee. Therefore, the affidavits of relatives are not considered as reliable evidences as the same are not verifiable from independent sources. On merits also, the affidavits are not found to be worth considering. *In this regard it is submitted that the affidavits of the family members(PB 43-45) had already been filed before the ld. AO which has not been rebutted by him and only to support these affidavit of family members and Will of father, the assessee has filed the affidavit of his close relative (sister's son) and the ld. CIT(A) has also send the same to the ld. AO for his comments but he has not rebutted the contentions of the affidavit and the ld. CIT(A) without disproving the contentions of the affidavits has proceeded on his assumption/presumption and suspicion for that we have already submitted in our WS before the ld. CITA) vide PB31-34. Hence the observation of the ld. CIT(A) is very casual and not permissible in the eyes of law. Affidavit cannot discarded without bringing any contrary documentary evidence.*

Also refer the decision of **Vimal Chatur vs.ITO Ward 2(2), Udaipur 351/Jodh/2023 dt. 26.04.2024** wherein it has been held that

*We have heard the rival contention and perused the material placed on record. We observed that the assessee and his wife namely Smt. Kanak Lata Chajed both are Senior Citizen, Retired Govt. Employee and pensioner. The assessee has filed the cash flow statements of last five years available at page 16 of the CIT(A) order and at page 18 of the paper book alongwith cash flow statements. The assessee has also filed the day wise cash withdrawals and deposit which are available at Page 19 to 30 of paper book. The lower authorities have only doubted the cash flow statements but could not disproved with any contrary evidences about the withdrawal of cash and its source. The assessee has also filed a family settlement of her wife family vide PB31-32, where she got Rs.3,61,000/- which is also available with the assessee and the lower authorities has discarded or disbelieved without examining and without bringing any adverse evidence. The assessee has also filed the affidavit of his wife namely Smt. Kanak Lata Chhajed before CIT(A), which is produced before us at page 16-17of paper book. We note in the affidavit she clearly stated that the bank accounts were jointly owned and she had deposited the cash of Rs.15,59,000/- in these bank accounts, this affidavit has also been remained uncontroverted. It is settled law that the contents of an affidavit should be read correct and full unless not controverted.*

*8.1 To support his arguments the Ld. AR for the assessee has also drawn our attention to the judgments of Hon'ble Supreme Court in the case of Mehta Parikh & Co. v. Commissioner of Income-tax, [1956] 30 ITR 181 (SC) wherein Court has held as that:-*

*" It has to be noted, however, that beyond these calculations of figures, no further scrutiny was made by the Income-tax Officer or the Appellate Assistant Commissioner of the entries in the cash book of the appellants. The cash book of the appellants was accepted and the entries therein were not challenged. No further documents or vouchers in relation to those entries were*

*called for, nor was the presence of the deponents of the three affidavits considered necessary by either party. The appellants took it that the affidavits of these parties were enough and neither the Appellate Assistant Commissioner, nor the Income-tax Officer, who was present at the hearing of the appeal before the Appellate Assistant Commissioner, considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in their affidavits. Under these circumstances it was not open to the Revenue to challenge the correctness of the cash book entries or the statements made by those deponents in their affidavits.*

*This being the position, the state of affairs, as it obtained on 12th January, 1946, had got to be appreciated, having regard to those entries in the cash books and the affidavits filed before the Appellate Assistant Commissioner, taking them at their face value. The entries in the cash books disclosed that, taking the number of high denomination notes at 18 on 2nd January, 1946, there came in the custody or possession of the appellants after 2nd January, 1946, and up to 12th January, 1946, 49further notes of that high denomination, making 67 such notes in the aggregate, out ofwhich 61 such notes could be encashed by the appellants on 18th January, 1946, through the Eastern Bank. A mere calculation of the nature indulged in by the Income-tax Officer or the Appellate Assistant Commissioner was not enough, without any further scrutiny, to dislodge the position taken up by the appellants, supported as it was, by the entries in the cash book and the affidavits put in by the appellants before the Appellate Assistant Commissioner."*

*Considering the reconciliation and cash flow statement filed by the assessee along with family settlement deed and affidavit of assessee's wife, wherein she owned responded of having deposited of cash out of her owned source and saving., Therefore, without controverting the fact stated of affidavit by the wife of the assessee, the addition made by the lower authorities even for an amount of Rs. 12,87,100/- is also not sustainable in the hands of the assessee and therefore, the same is directed to be deleted.*"

Under the same facts and circumstances, the Honble ITAT Jodhpur Bench in the case of **Suresh Kumar Sanghvi v/s DCIT Central Circel-1 Udaipur in ITA No.373/Jodh/2023 dt. 10.04.2024** has been held that an affidavit is a document of extreme importance and value. Although it can be signed by Principal Officer as well as their authorized representative, it is expected that it is signed only by the persons who are fully aware of the facts and circumstances of the case. Affidavit is treated as 'evidence' within the meaning of Sec. 3 of the Evidence Act.

Here also the same position

**4.2** The ld. CIT(A) stated that appellant has not furnished evidences of acquisition of the silver bars other than current year. The silver is therefore **presumed** to be acquired during the current year. The wills are not found to be reliable as these are not registered and source of acquisition of silver bars is not explained. No such existence of will was claimed by the assessee during the search proceedings. No reason was explained for not disclosing the existence of will in the search proceedings. The will was not produced before the AO also. No reason was explained for not furnishing it before the AO. In view of these facts, the will is considered as an afterthought and not considered as admissible evidence**. :-** *In this regards as we have already stated that the silver was came from forefathers and parental, hence how the assessee can be presumed to give the evidences of very old matter and when assessee has not purchased the same. And it has also*

*been stated in the statements itself recorded during the search. Hence it cannot be said as afterthought.*

**4.3.** The 150 kg fine silver from locker in the name of assessee himself is an evidence. The ownership for fine silver of 300 kg is rightly assumed in the hands of the assessee by AO as per provision of section 132(4A) of the Income-tax Act, 1961. In the statement, the assessee stated that this fine silver was received by him from his father and his father received it from his father and this fine silver is belonged to his fathers' HUF. During the search the assessee admitted that there is no documentary evidence which establish that the fine silver found in the locker maintained by the assessee, is belonged to someone else. Further, no will or gift or any documents was submitted to justify the claim of HUF before the AO. Before the AO it was claimed that the silver is belonging to the HUF of father of the assessee. However, the source of income of HUF, when it was purchased, from whom purchased was not brought on records. **:-***In this regard it is submitted that when we have already stated that this has come from forefathers and parental, due to this has become the assets of HUF and when the members of HUF had already confirmed the same by filling their declaration or affidavit the there should not be any question to make the additions in the hands of the assessee and the addition was if any to be made in the hands of HUF or at the worst respective members after disproving the contentions of the assesse. And regarding the Will it is submitted that when AO has not required and the assessee fond later on laying other place then he has submitted before the ld. CIT(A), and it is not necessary that the Will should be registered and Will has not been challenged by any of the members of HUF and relatives, then it cannot discarded when the same was very old i.e year of 1990. A vital document cannot be brush-aside or discarded without brining any adverse documentary evidences.*

**4.4** The source of fine silver remains unexplained before the AO and in theappellate proceedings. The appellant reiterated the argument that the silver is not belonging to him.

**4.5** The appellant has not discharged the onus of proving that the seized Silver are belonging to other persons. Hence, the presumption hold good in the case of the assessee**.:-** In this regard it is submitted that as we have already stated that no addition can be made on assumption, presumption and suspicion. And in support of contentions assessee had filed various evidences or details as under:

*(a) Copy of the Locker Operation Register maintained by the banks(PB46-51)*

*(b) Certificate issued by the concerned banks, confirming the periods of inactivity of the lockers(PB46-51)*

*(c)The Will of the Assessee's father/grandfather (**PB 52-54**), which establishes that the silver bars were inherited from the father/grandfather and not purchased during the assessment year 2018-19.*

*(d) Confirmations, affidavits, and declarations (**PB 43-45**) from the Assessee's brothers, supporting that the silver bars belonged to their father and were passed on to them as part of an inheritance.*

*(d)Confirmation, affidavit of Dharendra Kumar Salgiya S/o Shri KanhaiyaLalJiSalgiya, who is the son of assesees'sBhua, Smt. Mohini Devi and also witness in Will* ***(PB 55-56)***

(e) Statements of assessee recorded during search (PB24-28) which is the evidence of the revenue itself.

***Hence how can it be said that the assessee not filed any evidences other side the ld. lower authorities have not brought a single documentary evidences on record in their support except assumption, presumption guess work and suspicion on which no addition can be made.***

*5. Further as already stated that during the course of the search, no incriminating documents or evidence were found indicating that the Assessee made any undisclosed investments in silver during the years. Therefore, it is clear that the silver bars were not purchased during the year under consideration as wrongly alleged.* When the ld. AO has made the addition by alleging that the same found in the A.Y. 2019-20 and we have disproved the allegation of the ld. AO the ld. CIT(A) has made the addition in the A.Y. 2014-15 and 2016-17 which shows the contradictory approach of the lower authorities. And only due to the reasons the locker in the name of the assessee but at the same time he ignored the facts that all the HUF members had declared that the silver found in the locker of Sh. Ochhablal Jain belongs to our HUF. Then, how the ld. AO can make the addition in the hands of assessee.

Hence in view of the above facts, circumstances and the legal position the addition so made may kindly be deleted in full and oblige."

5. The Ld. AR of the assessee in support of the contention so raised in the written submission, placed reliance on the following evidence / records :

| S.No. | Particulars | Page No. |
|---|---|---|
| 1. | Copy of WS to CIT(A) for AY 2019-20 | 1-35 |
| 2. | Copy of reply to AO dated 05.03.2020 for AY 2019-20 | 36-42 |
| 3. | Copies of affidavits of family members | 43-45 |
| 4. | Copy of Certificate from Bank along with Locker Operation Register | 46-51 |
| 5. | Copy of Will | 52-54 |
| 6. | Copy of affidavit of relative | 55-56 |
| 7. | Copy of Remand report and comments on the remand report | 57-61 |
| 8. | Copy of SCN issued by CIT(A) dated 10.12.2024 & 11.12.2024 | 62-65 |
| 9. | Copy of reply to SCN | 66-71 |
| 10. | Copy of CIT(A)'s order for AY 2019-20 | 72-104 |
| 11. | Copy of assessment order for AY 2019-20 | 105-119 |

6. The ld. DR is heard, who relied on the findings of the CIT(A) and more particularly advanced similar contentions as stated in the order of ld.CIT(A).

7. We have heard the rival contentions and perused the material placed on record, as well as the relevant provisions of law and the case laws cited by the Ld.AR in support of his case. The issue which arise for our consideration is whether the ld CIT(A) was justified in bringing to tax the value of silver, found from the locker of the assessee u/s 69A (which was neither discussed nor dealt with in the assessment order of the relevant year) by way of enhancement of income, in terms of provisions of section 251(1)(a) of the Act.

8. There is no doubt about the fact that while framing the assessment even under Section 143(3) of the Act, the Assessing Officer may omit to make certain additions of income or omit to disallow certain claims which are not admission under the provisions of the Act thereby leading to escapement of income. The Income-Tax Act provides for remedial measures which can be taken under these circumstances. While framing assessment under Section 143(3) of the Act, any of the following situations may occur:-

(a) The Assessing Officer may accept the return of income without making any addition disallowance; or

(b) The assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of order of assessment but he under-assessed such sums; or

(c) He makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income

(d) Yet, there can be another situation where the Assessing Officer inadvertently omits to tax amount which ought to have been taxed and in respect of which he does not make a enquiry.

(e) Further another situation may arise, where an item or items of income or expenditure incurred and claimed is not at all considered and an assessment is framed, as a res thereof, a prejudice is caused to the revenue, or

(f) Where an item of income which ought to have been taxed remained untaxed, and there is escapement of income, as a result of the assessee's failure to disclose fully and truly material facts necessary for computation of income.

To ensure for each of such situations, an income which ought to have been taxed and remain untaxed, the legislature has provided different remedial measures as are contained in section 251(1)(a), 263, 154 and 147 of the Act. In the category stated

in (a), obviously if an income escapes an assessment, the provisions Section 147 of the Act can be invoked, subject to the condition stated in the proviso of the section. In the category of cases falling in category (b), section 251(1)(a) provides the CIT(A) could enhance such an assessment qua the under-assessed sum i.e. where the AO had dealt the issue in the assessment and was the subject matter of appeal. In category falling in (c) & (e), the CIT has been empowered to take an appropriate action under section 263 of the Act In category of case falling under clause (d) and (f), appropriate action under section 147 of the Act can be taken to tax the income which has escaped assessment or had remained to be taxed. There can be situation where an item has been dealt with in the body of the order of assessment and the assessee be aggrieved from the addition or disallowances so made, had preferred an appeal before the CIT against the said addition and disallowance, the said disallowance and addition being the subject matter of appeal before the CIT(A) in such cases, the CIT(A) has been empowered u/s 251(1)(a) the Act, to enhance such an income where the Assessing Officer had proceeded to make addition or disallowance by dealing with the same in the body of order of assessment as the same was the subject matter of the appeal as per the grounds of the appeal raised before him. In other words, the CIT(A) has a power of enhancement in respect of such item or items of income which has been dealt with

in the body of the order of the assessment, as arose for his consideration as per the grounds of appeal raised before him, being the subject matter of appeal.

8.1 Regarding the powers of the ld CIT(A) by way of enhancement of income in hands of the assessee, the matter had come up for the consideration before the Hon'ble Supreme Court in case of CIT vs. Shapoorji Pallonji Mistry reported in 44 ITR 891, wherein the question framed for consideration was "whether in an appeal filed by an assessee, the Appellate Assistant Commissioner can find a new source of income not considered by the Income-tax Officer and assess it under his powers granted by section 31 of the Income-tax Act"?

9. The legal proposition laid down by the Hon'ble Supreme Court reads as under:

> "There is no doubt that the Appellate Assistant Commissioner can "enhance the assessment". It is admitted also by the assessee that within the four corners of the sources processed by the Income-tax Officer, the Appellate Assistant Commissioner can enhance the assessment. This power must, at least, fall within the words "enhance the assessment", if they are not to be rendered wholly nugatory. The controversy in this case is about his discovering new sources, not mentioned in the return and not considered by the Income-tax Officer. The High Court held following its earlier view in NarrondasManordass vs. Commissioner of Income-tax [1957] 31 ITR 909, that the Appellate Assistant Commissioner has revisional powers, but that they are confined to what was before the Income-tax Officer and considered by the latter. The correctness of this view is challenged in this appeal by the Commissioner of Income-tax, Bombay. The earliest case, which considered the meaning of section 31(3), was JagarnathTherani vs. Commissioner of Income-tax AIR 1925 Pat. 408 decided by the Patna High Court. In that case, the assessee had three businesses at Purnea, Jalpaiguri and Calcutta. His income from Purnea only was assessed by the Income-tax Officer. On appeal by the assessee, the Appellate Assistant Commissioner assessed him with regard to the income from the other

two businesses. The head of income was the same within section 6 of the Incometax Act, but the sources of income were different. The Patna High Court observed : "Now this section relating to appeals is enacted for the benefit of the subject and also, to the limited extent therein stated, for the benefit of the Crown. But the subject-matter of the appeal is the assessment and the scope of the appeal must in my opinion be limited by the subject-matter. The appellate authority has no power to travel beyond the subject-matter of the assessment and, for all the reasons advanced by the appellant, is in my opinion not entitled to assess new sources of income. The view of the Patna High Court receives support from a decision of the Madras High Court in Gajalakshmi Ginning Factory vs. Commissioner of Income-tax [1952] 22 ITR 502 where, at page 510, the Divisional Bench observed as follows: "Of course, it would not be open to the Appellate Assistant Commissioner to introduce into the assessment new sources, as his power of enhancement should be restricted only to the income which was the subject-matter of consideration for purposes of assessment by the Income-tax Officer." In Bishwanath Prasad Bhagwat Prasad v. Commissioner of Income-tax [1956] 29 ITR 748, the Appellate Assistant Commissioner had actually remanded the case, but while considering the powers of the Appellate Assistant Commissioner, the Divisional Bench appears to have approved of the abovequoted passage from the Madras case. The observations in that case may be treated as obiter. In NarrondasManordass vs. Commissioner of Income-tax [1957] 31 ITR 909 is to be found the earlier case of the Bombay High Court, which was followed in the judgment under appeal. In that case, the assessee was carrying on business in Bombay and also in Rajkot. The profits from the Rajkot business were assessed by the Income-tax Officer at Rs. 1,17,643. The Income-tax Officer also found remittances to the extent of Rs. 4 lakhs from Rajkot to Bombay, but did not include that amount in the assessment in view of the concession allowed by the Part B States Taxation Concession Order. The assessee appealed with respect to the sum of Rs. 1,17,643, contending that the Rajkot business had no profits but only loss. The Appellate Assistant Commissioner accepted this contention, but set aside the assessment and remanded the case to the Income-tax Officer for reassessment with a view to assessing the sum of Rs. 4 lakhs. In dealing with the case, the High Court held that the powers of remand were extremely wide, but it quoted with approval the decision of the Patna High Court in JagarnathTherani vs. Commissioner of Income-tax AIR 1925 Pat. 408 and also the above observation of the Madras High Court. The learned Chief Justice on that occasion added that there was a distinction between the subject-matter of the appeal and the subject-matter of the assessment, and that the Appellate Assistant Commissioner's powers under section 31 were not confined to the subject-matter of the appeal but extended to the subject-matter of the assessment. Those powers included a power of remand to include in the assessment something which ought to have been so included by the Incometax Officer, and a remand in that case was, therefore, proper. The matter also came before this court in Commissioner of Income-tax vs. McMillan & Co. [1958] 33 ITR 182 (SC);

but the question, with which we are concerned, was left open. There is, however, a passage in the judgment, approving of the observations of Chagla, C.J., in NarrondasManordass vs. Commissioner of Income-tax [1957] 31 ITR 909 to the following effect: "It is clear that the Appellate Assistant Commissioner has been constituted a revising authority against the decisions of the Income-tax Officer; a revising authority not in the narrow sense of revising what is the subject-matter of the appeal, not in the sense of revising those matters about which the assessee makes a grievance, but a revising authority in the sense that once the appeal is before him he can revise not only the ultimate computation arrived at by the Income-tax Officer but he can revise every process which led to the ultimate computation or assessment. In other words, what he can revise is not merely the ultimate amount which is liable to tax, but he is entitled to revise the various decisions given by the Income-tax Officer in the course of the assessment and also the various incomes or deductions which came in for consideration of the Income-tax Officer." The learned Chief Justice in the judgment under appeal considers that this court has thus given approval to his view and also the view of the Patna High Court in the earlier case. In our opinion, this court must be held not to have expressed its final opinion on the point arising here, in view of what was stated at pages 709 and 710 of the report. This court, however, gave approval to the opinion of the learned Chief Justice of the Bombay High Court that section 31 of the Income-tax Act confers not only appellate powers upon the Appellate Assistant Commissioner in so far as he is moved by an assessee but also a revisional jurisdiction to revise the assessment with a power to enhance the assessment. So much, of course, follows from the language of the section itself. The only question is whether in enhancing the assessment for any year he can travel outside the record that is to say, the return made by the assessee and the assessment order passed by the Income-tax Officer with a view to finding out new sources of income not disclosed in either. It is contended by the Commissioner of Income-tax that the word "assessment" here means the ultimate amount which an assessee must pay, regard being had to the charging section and his total income. In this view, it is said that the words "enhance the assessment" are not confined to the assessment reached through a particular process but the amount which ought to have been computed if the true total income had been found. There is no doubt that this view is also possible. On the other hand, it must not be over looked that there are other provisions like sections 34 and 33B, which enable escaped income from new sources to be brought to tax after following a special procedure. The assessee contends that the powers of the Appellate Assistant Commissioner extend to matters considered by the Income-tax Officer, and if a new source is to be considered, then the power of remand should be exercised. By the exercise of the power to assess fresh sources of income, the assessee is deprived of a finding by two tribunals and one right of appeal. The question is whether we should accept the interpretation suggested by the Commissioner in preference to the one, which has held the field for nearly 37 years. In view of the provisions of sections 34 and 33B by which

escaped income can be brought to tax, there is reason to think that the view expressed uniformly about the limits of the powers of the Appellate Assistant Commissioner to enhance the assessment has been accepted by the legislature as the true exposition of the words of the section. If it were not, one would expect that the legislature would have amended section 31 and specified the other intention in express words. The Income-tax Act was amended several times in the last 37 years, but no amendment of section 31(3) was undertaken to nullify the rulings, to which we have referred. In view of this, we do not think that we should interpret section 31 differently from what has been accepted in India as its true import, particularly as that view is also reasonably possible."

10. The Hon'ble Rajasthan High Court in case of Commissioner of Income-tax vs. Associated Garments Makers reported in 64 Taxman 215, following the above decision of the Hon'ble Supreme has held as under:

"7. Appeals are provided under section 246 of the Act before the AAC and the Commissioner (Appeals). These appeals are by the assessee aggrieved by the orders mentioned therein. Any order made under section 143(3) is appealable and the powers of the appellate court are provided in section 251 of the Act wherein appellate authority has power to confirm, reduce, enhance or annul the assessment or he may set aside the assessment and refer the case back to the ITO for making fresh assessment in accordance with directions given in appeal and after making such further enquiry as may be necessary. These powers are, inter alia, mentioned in the other powers. According to sub-section (2) of section 251, the AAC has no power to enhance assessment or a penalty, or reduce the amount of refund unless the appellant has a reasonable opportunity for showing cause against such enhancement or reduction. An explanation has been provided according to which the AAC may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding the fact that such matter was not raised before him. A perusal of sections 246 to 251 of the Act makes it clear that any questions arising out of the assessment orders in an appeal by the assessee can be possible and wide powers are given to the appellate authority, but these powers are circumscribed by the assessment order in the matters arising thereof or a matter arising out of the proceedings. Even the appellate authority has suo-motu power to consider the questions arising thereof but there is no provision to go beyond the matter arising out of the proceedings before the assessing authority, more particularly as separate provisions for that are made in the Act. The Tribunal has elaborately discussed the provisions of the Act and the case law on the subject and has rightly come to the conclusion that new sources not mentioned in the return or considered by the ITO are beyond the scope of powers of the AAC. The case relied on by the learned counsel for the

petitioner about the power of setting aside the assessment order remanding the case for re-consideration of the whole matter including the evasion by the assessee, is not applicable to the facts of the present case because the matter arising in that case was one which arose out of the proceedings before the ITO. The question was not about new and fresh material for the purposes of enhancement. On the contrary, the case is clearly covered by the decisions of the Supreme Court in CIT v. Shapoorji Pallonji Mistry's case (supra) wherein it has been held that, "In an appeal filed by the assessee the Appellate Assistant Commissioner has no power to enhance the assessment by discovering new sources of income not mentioned in the return of the assessee or considered by the Income-tax Officer in the appealed against", and in the case of Rai Bahadur Hardutroy Motilal Chamaria (supra) wherein it has been held that, "It is not therefore open to the Appellate Assistant Commissioner to travel outside the record, i.e., the return made by the assessee or the assessment order of the Income-tax Officer, with a view to finding out new sources of income and the power of enhancement under section 31(3) is restricted to the sources of income which have been the subject-matter of consideration by the Income-tax Officer from the point of view of taxability". Their Lordships considered the meaning of the word 'consideration' and held that, " 'consideration' does not mean 'incidental' or 'collateral' examination of any matter by the Income-tax Officer in the process of assessment. There must be something in the assessment order to show that the Income-tax Officer applied his mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection". In the instant case, the AAC had himself, after issuing notice, considered the new material and had gone into new sources of income for the consideration of which he had no jurisdiction. “

11. The only question is as to whether the CIT(A), in exercise of power under Section 251(1)(a) the Act has the power to enhance the assessment in the manner done in the instant case. Noted above, the submission of learned counsel for the appellant was that the Assessing Office had not dealt with the issue in question (silver found in locker on which additions are made) in the assessment order at all and therefore, the CIT(A) had no power to make any additions under Section 251(1)(a) of the Act. According to the assessee, even if the Assessing Officer might have discussed such an issue during the course of hearing

before him, i.e. incidental or collateral examination, that itself would not have given power to the CIT(A) unless the issue was specifically dealt with by the AO in body of the order of the assessment. It is this aspect which needs consideration in the present case.

12. When we consider the provisions of section 251 and the above judicial pronouncements, certain principles emerge as to that the power to enhance is restricted to the subject matter of assessment or the source of income which have been considered expressly or by clear implications by the AO from the point of view of the taxability of the assessee. In other words the CIT(A) can exercise the power to enhance under section 251(1) in a case where the AO has considered a particular issue of disallowance or addition and while doing so has under-assessed the income of the assessee. In cases where the AO has not dealt with the issue at all and has not applied his mind on the taxability or non-taxability of a certain matter, then the CIT(A) has no jurisdiction to enhance under section 251(1) but should resort to alternate course of action either under section 263 or 147 or 154 as the case may be. The Hon'ble Supreme Court in the case of Rai Bahadur Hardutroy Motilal Chamaria (supra) held that powers of enhancement conferred on the appellate authority extends only to matters considered by the Income-tax Officer. Therefore, it becomes important to analyse whether the AO has considered the issue but has determined" in the course of assessment by deciding not to make any

addition/disallowance on that account thereby empowering the CIT(A) to invoke the provisions in respect of enhancement under section 251 of the Act.

13. In the given case, from the perusal of the assessment order we notice that the AO has not recorded the fact that any silver was found from the locker(s) of the assessee during the course of search, anywhere in the assessment order. In body of the assessment order where the AOhas determined the assessed income, there is mention of only Unaccounted cash loan and interest received thereon. Given this, in assessee's case the CIT(A) has decided the issue of taxability of silver found during search, which has not earlier been considered by the AO. In this regard we notice that the Hon'ble High Court of Delhi in the case of CIT v. Sardari Lal & Co. [2002] 120 Taxman 595/[2001] 251 ITR 864 has considered a similar issue wherein it is held that -"the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 and section 263, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority."

14. Considering the facts and circumstances of the case, position of law and judicial precedents, all of which have been elaborately discussed above, we are of

considered view that exercise of power by the ld. CIT(A) to enhance the income of the assessee by raising the new issues not germane out of the assessment order is not tenable. Accordingly, additions made by exercising such power are deleted. Grounds taken by the assessee in this respect are allowed. Since we have dealt with the legal issue on the exercise of power of enhancement by the ld. CIT(A), grounds relating to the merits of the case have been rendered academic and are not adjudicated upon. Hence, appeal of the assessee is allowed.

15. As regards the other appeal of the assessee bearing ITA No.429/JODH/2025 for the assessment year 2016-17, the decision taken by us in ITA No.428/JODH/2025 shall apply mutatis mutandis upon it.

16. In the result, both the appeals of the assessee are allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

| Sd/- | Sd/- |
|---|---|
| **(Dr. Mitha Lal Meena)** | **(DR. S. Seethalakshmi)** |
| **Accountant Member** | **Judicial Member** |

Dated 29/05/2025
Santosh- Sr. P.S
Copy of the order forwarded to:

(1)The Appellant

(2) The Respondent

(3) The CIT

(4) The CIT (Appeals)

(5) The DR, I.T.A.T.

True Copy
By order