



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.435/RJT/2024
निर्धारणवर्ष /Assessment Year: 2018-19

P M Jewalex Pvt. Ltd. (Formerly known as Pareshbhai 101, Shreeji Balaji Paragon, Nr. Rock Rewgency Hotel, Opp. Samartheshwar Mahadev, C. G. Road, Ahmedabad, Gujarat - 380009 PAN : AAJCP1915H	बनाम Vs.	Assistant Commissioner of Income-tax Central Circle-2, Rajkot
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri S. N. Divatia, AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/08/2025

घोषणा की तारीख/Date of Pronouncement : 03/11/2025

ORDER

Per Dinesh Mohan Sinha, Judicial Member:

Captioned appeal filed by assessee pertaining to Assessment Year 2018-19, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by the Ld. Commissioner of Income-tax (Appeal)-11, Ahmedabad (in short ‘CIT(A)’), dated 10.05.2024, which in turn arises out of assessment order passed by Assessing Officer u/s. 143(3) r.w.s. 153C of the Act on 19.12.2019.



2. The grounds of appeal raised by the assessee are as under:

- “1.1 The order passed by U/s.250 passed on 10.05.2024 by CIT(A)-11, Ahmedabad for AY 2018-19 confirming the addition of Rs. 10,54,212/- as unaccounted investment u/s 69A made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 2.1 The Id. CIT(A) has grievously erred in law and or on facts in not appreciating that the notice issued u/s 153C and the proceedings completed u/s 153C rws 153A are wholly illegal and unlawful because the condition precedent are not satisfied.*
- 3.1 The Id. CIT(A) has grievously erred in law and or on facts in upholding the addition of Rs. 10,54,212/- as unaccounted investment u/s 69A made by AO. The Id. CIT(A) ought not to have confirmed the protective assessment in the case of appellant without ascertaining the fate in the hands of the senders of the good.*
- 3.2 That the in the facts and circumstances of the Id. CIT(A) ought not to have upheld the addition of Rs. 10,54,212/- as unaccounted investment u/s 69A made by AO.*
- 3.3 The Id. CIT(A) has grievously erred in law and or on facts in upholding that the appellant was the owner of the gold weighing 348.54 gms intercepted at the Airport and as such the conditions precedent for invoking sec.69A were not satisfied.”*

3. The brief facts of the case are that Shri Sureshkumar from Jay Mata Di Air Service and Shri Jagdish Prasad of Bright Courier were intercepted on 27/10/2017 at the Rajkot Airport and parcels containing small packets of Gold/Bullion/Jewellery were found. As the same remained unexplained and the said persons failed to furnish the details of ownership of the same, it was seized. As per statement recorded u/s, 132(4), they confirmed that the parcels were to be delivered to various persons at Rajkot. One of the consignees was the appellant and therefore, as per the provisions of the Act, the appellant was provided with copies of satisfaction Note and statements recorded. The AO also intimated the Jurisdictional AO of the claimed consignor of gold/Bullion/jewellery i.e. M/s. Akarsh Gold, Ludhiana regarding the seizure of 348.54 gms of gold valued at Rs.10,54,212/- and to take appropriate actions in



that case. The appellant was also specifically asked to furnish the details and submission regarding the gold seized along with supporting evidences in respect of Fine Gold of 348.54 gms (valued at Rs. 10,54,212/-) claimed to have been sent by M/s. Akarsh Gold, Ludhiana. Since, no details were furnished before the AO, the AO finalized the assessment 143(3) r.w.s. 153C of the Act, order dated 19.12.2019 making protective addition of the above sum to the total Income of the appellant. The AO has followed due procedure while passing the assessment order and no infirmity is noticed by the Ld. CIT(A). In view thereof, the assessment order passed by the AO is held to be valid and the related ground of appeal was hereby rejected by the Ld. CIT(A).

3.1 The AO made an addition of Rs.10,54,212/- u/s 69A of the Act on protective basis. The fact in brief is that ADIT, Investigation, Rajkot had Intercepted two persons namely Shri Sureshkumar Jaikishan Bhangarwa and Shri Jagdish Prasad of Bright Courier on 27/10/2017 at Rajkot Airport who were carrying various parcels including parcels allegedly sent by M/s. Akarsh Gold, Ludhiana, Delhi weighing 348.54 gms of gold to the assessee through Jet Airways. The parcels allegedly were to be delivered to the assessee containing total Fine Gold weighing 348.54 gms. The said Gold was finally seized by the ADIT, Rajkot and on not being satisfied with the supporting documents provided or produced regarding the ownership of above stated Gold during post interception Interrogation/investigation. Subsequently, proceedings u/s 153C was initiated in the case of the assessee and AO has also sent the information/his satisfaction note for initiation of proceedings u/s 153C to the jurisdictional AO of the supplier M/s. Akarsh Gold, Ludhiana.

3.2 The AO in the assessment order, held that the Fine Gold received by the assessee was belonging to M/s. Akarsh Gold, Ludhiana weighing 348.54 gms,



but it was not known whether it is explained one or unexplained. Therefore, in order to protect the interest of revenue, he made addition of Rs.10,54,212/- being the value of Fine Gold/gold bar weighing 348.54 grams in the hand of the appellant on protective basis as substantive assessment is to be made in the cases of M/s. Akarsh Gold, Ludhiana.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld.CIT(A), who has confirmed the action of the AO by observing as follows:

“Since, the appellant has failed to prove with evidences, the onus cast upon him to prove that the gold ornaments allegedly sent to him by M/s. Akarsh Gold, Ludhiana for job work had been considered by the AO in that case; the action of the AO in treating the fine gold/gold bar valued at Rs.10,54,212/- as unaccounted investment and adding it to the total income of the appellant U/s.69A of the Act on protective basis is hereby confirmed.”

5. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

6. Ground Nos. 1 & 2 are not pressed by the Ld. AR.

7. During the course of hearing, the Ld. Counsel for the assessee has submitted that in this case the substantive addition has not been made in the hands of the true owner and only protective addition was made in the hands of the assessee. The Ld. Counsel pointed out that the true owner in whose hands the substantive addition was to be made is Smt. Ritu Verma who is the proprietor of M/s. Akarsh Gold. As no assessment was framed in the hands of M/s. Akarsh Gold, that is, no substantive addition was made in the hands of M/s. Akarsh Gold, therefore, protective addition should not be made in the hands of the assessee. Ld. Counsel submitted that this protective addition was made in the hands of the assessee u/s.69 A of the Act, which was not required as



the substantive addition has not been made by the Department in the hands of true owner, then no protective addition should be made in the hands of the assessee under consideration, under the wrong section of the Income Tax Act, 1961.

8. The Ld. Counsel for the assessee submitted that during the assessment proceedings as well as appellate proceedings, the assessee submitted relevant documents and evidences as and when called by the authorities. The documents which were submitted before the AO were already placed in the paper-book of the assessee and there is no new evidence in the paper-book.

9. On the other hand, the Ld. DR for the Revenue relied on the findings of the authorities below and stated that since no substantive addition has been framed by AO, therefore, the protective addition should be sustained in the hands of the assessee, to protect the revenue.

10. We have heard the both the parties and perused the materials available on record. We note that AO had made an addition of Rs.10,54,212/- u/s 69A of the Act on protective basis. The ADIT, Investigation, Rajkot had intercepted two persons namely Shri Sureshkumar and Shri Jagdish Prasad of Bright Courier on 27.10.2017 at Rajkot Airport who were carrying Delhi weighing 348.54 gms gold to the assessee through Jet Airways. The parcels allegedly were to be delivered to the assessee containing total Fine Gold weighing 348.54 gms. The said Gold was finally seized by the ADIT, Rajkot and on not being satisfied with the supporting documents provided or produced regarding the ownership of above stated Gold during post interception interrogation/investigation. Subsequently, proceedings u/s 153C was initiated in the case of the assessee P M Jewelex P. Ltd. and AO has also sent the information/his satisfaction note for



initiation of proceedings u/s 153C to the jurisdictional AO of the supplier M/s. Akarsh Gold, Ludhiana.

The AO in the assessment order, held that the Fine Gold received by the assessee was belonging to M/s. Akarsh Gold, Ludhiana, weighing 348.54 gms, but it was not known whether it is explained one or unexplained. Therefore, in order to protect the interest of revenue, he made addition of Rs.10,54,212/- being the value of Fine Gold weighing 348.54 grams in the hand of the appellant on protective basis as substantive assessment is to be made in the cases of M/s. Akarsh Gold, Ludhiana.

11. The appellant has contended that the supplier M/s. Akarsh Gold, Ludhiana is the owner of the gold and they had sent parcel to the appellant for the job-work purposes and had submitted all the details during the post-search proceedings. It is also stated that the supplier had furnished the stock register as well as his purchase bills evidencing that he had enough stock on hand from which the gold has been sent to the appellant for job-work. All these facts have already been verified by the AO during the assessment proceedings and no new evidences have been filed during the appellate proceedings before CIT(A). It is also stated that the copy of assessment order in the case of Om Jewellers is not available with the appellant and that as per knowledge of the appellant, the assessment was not reopened for the A.Y. 2018-19. However, the appellant has not submitted any evidence(s) to this claim nor could explain the fate of the gold, claimed to have been sent by M/s. Akarsh Gold, Ludhiana for job-work purpose despite giving various opportunities. Since, the appellant has failed to prove with evidences, the onus cast upon him to prove that the gold ornaments sent to him by M/s. Akarsh Gold, Ludhiana for job-work had been considered by the AO in that case, the action of the AO in treating the fine gold valued at



Rs.10,54,212/- as unaccounted investment and adding it to the total income of the appellant U/s. 69A of the Act on protective basis was confirmed by CIT(A).

12. We note that no substantive addition has been made in the hands of M/s. Akarsh Gold and the aim of protective addition is made to protect the interest of Revenue. The Revenue did not make the substantive addition in the hands of the true owner. Therefore, protective addition made in the assessee's case should not be sustained. We note that assessee has furnished the following documents and evidences before the Assessing Officer.

- (1) Copy of self-certified stock ledger from the books of M/s. Akarsh Gold.
- (2) Copy of issue voucher no1 from the books of M/s. Akarsh Gold,.
- (3) Page print of the e-proceedings from the Income tax login of M/s. Akarsh Gold Proprietor Smt. Ritu Verma depicting that no assessment has been carried out for the A.Y 2018-19 in the hands of true owner.
- (4) Page print from the Income tax login of M/s. Akarsh Gold Proprietor Smt. Ritu Verma depicting depicting Nil outstanding demand.

13. That the Ld. DR during the course of hearing confirmed this fact that no substantive addition has been made in the hands of M/s. Akarsh Gold, who was the true owner of the gold. The Protective addition was merely made in the hands of the assessee to protect the revenue. The AO made protective addition only in the hands of the assessee on the presumption that if substantive addition is made in the hands of M/s. Akarsh Gold and till M/s. Akarsh Gold accepted, its responsibility as a true owner, the protective addition may be made in the hands of the assessee and, therefore, it was imperative to protect the interest of revenue to avoid the possibility of leakage of revenue and to deal with the



contingent situation till the substantive addition gets finalized. We note that no substantive addition has been made in the hands of the true owner, then no protective addition in the hands of the assessee survive. The protective addition can only be made when *prima facie* appears to the revenue that income earned either by M/s. Akarsh Gold or by assessee under consideration, then it would be open to the Income Tax Authorities either to tax the income in hands of M/s. Akarsh Gold or in the hands of the assessee. We note that the Department did not to make addition in the hands of true owner, M/s. Akarsh Gold and M/s. Akarsh Gold has accepted the ownership, however, the Department has failed to make the addition in the hands of M/s. Akarsh Gold. Therefore, we find that the assessee cannot be made liable to pay the income-tax on protective basis as the assessee is not the true owner of the gold and for that we rely on the judgement of Hon'ble Supreme Court in the case of **Lalji Haridas vs. ITO reported at (1961) 43 ITR 367 (SC)**. We find that the Ld. DR for the Revenue submitted before the Bench that no substantive addition has been made in the hands of M/s. Akarsh Gold and this fact we have recorded after doing enquiry by the Ld. DR for the Revenue in the Income Tax Department and it has been categorically stated by the Ld. DR for the Revenue that no substantive addition was made in the hands of owner, M/s. Akarsh Gold. Therefore, we find that the Department was unable to collect the taxes from the true owner, xzthe Department cannot collect the taxes from the person in whose hands the protective addition was made, just to protect the revenue till the time the substantive addition has been made in the hands of the true owner. Since the Department has failed to frame the substantive addition in the hands of the True owner, therefore assessee is not liable to accept these transactions as there is no any facts which shows that assessee under consideration is true owner of the transactions. We have examined the facts and find that assessee under consideration is not true owner



of the gold. Therefore, considering these facts and circumstances, we delete the addition, and confirmed by the Ld.CIT(A).

14. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 03/11/2025

**Sd/-
(Dr. Arjun Lal Saini)
Accountant Member**

**Sd/-
(Dinesh Mohan Sinha)
Judicial Member**

राजकोट /Rajkot

//True Copy//

दिनांक/ Date: 03 /11/2025

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation (dictation sheet is enclosed with main file.)	
2) Date on which the typed draft is placed before the Dictating Member & Other Member	
3) Date on which the approved draft comes to the Sr. P.S./P.S.	
4) Date on which the fair order is placed before the Dictating Member for pronouncement	
5) Date on which the fair order comes back to the Sr. P.S./P.S.	
6) Date on which the file goes to the Bench Clerk	
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	