IN THE INCOME TAX APPELLATE TRIBUNAL, SMC BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 534/RJT/2024

(निर्धारण वर्ष / Assessment Year: 2018-19)

Shri Divyes Vinodrai Patadiya, Shreenathji Krupa, Ranchhod Nagar-3, Pedak Road, Rajkot-360003	**Vs.**	Assistant Commissioner of Income Tax, Central Circle-2, Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ATMPP6319G**		
(Assessee)		**(Respondent)**

Assessee by : Shri Mehul Ranpura, AR

Respondent by : Shri Abhimanyu Singh Yadav, Sr. DR

Date of Hearing : 22/09/2025

Date of Pronouncement : 11/12/2025

आदेश / O R D E R

Per, Dr. Arjun Lal Saini, AM.

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2018-19, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad [in short "the ld. CIT(A)"], dated 09.10.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 153C of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 19.12.2019.

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

"1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The ld. Commissioner of Income-tax (Appeals)-11, Ahmedabad [hereinafter referred as to the "CIT(A)"] erred on facts as also in law in not deciding the ground of appeal related to validity of assessment order passed u/s. 153C of the Act. That on facts as also in law, initiation of action u/s. 153C of the Act is invalid and assessment finalized on such invalid initiation is deserves to be quashed and may kindly be quashed.

3. The ld. CIT(A) erred on facts as also in law in confirming addition of Rs. 10,68,864/- out of total addition of Rs.27,74,608/- made on protective basis on the alleged ground of failure to substantiate actual ownership of the gold seized. The addition made and confirmed is totally unjustified and uncalled for, which is deserved to be deleted and may kindly be deleted.

4. Your Honour's assessee craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal."

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual. The 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, therefore, it was seized. As per statement recorded u/s. 132(4) of the Act, they confirmed that the parcels were to be delivered to various persons at Rajkot. One of the consignees was the assessee, under consideration, and therefore, as per the provisions of the Act, the assessee was provided with copies of Satisfaction Note and Statements recorded. The assessing officer also intimated the jurisdictional assessing officers of the claimed consignors of gold / Bullion / jewellery i.e. Global Jewels India Limited, New Delhi (560.24 gms-valued at Rs.17,05,744] and M/s. Jiya Gems Pvt Ltd, New Delhi (350 gms-valued at Rs.10,68,864) regarding the seizure and to take appropriate actions in respective cases. The assessee was also specifically asked to furnish the details and submission regarding the gold seized along with supporting evidences in respect of Fine Gold of 560.240 gms (valued at Rs.17,05,744) and 350 gms (valued at Rs.10,68,864) claimed to send by M/s. Global Jewels India Ltd, Delhi and M/s. Jiya Gems Pvt Ltd, respectively. Since, no proper details were furnished before the assessing officer, therefore, assessing officer finalized the assessment 143(3) r.w.s.

153C of the Act making protective addition of the above sum of Rs. 27,74,608/-(Rs.17,05,744+ Rs.10,68,864) to the total income of the assessee.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal, before the Ld. CIT(A), who has partly deleted the addition made by the Assessing Officer.The assessing officer had in the assessment order, held that the Fine Gold received by the assessee were belonging to M/s. Global Jewels India Ltd, New Delhi weighing 560.24 gms and another parcel sent by Jiya Gerns Pvt Ltd, New Delhi weighing 350 gms, but it is not known whether it is explained one or unexplained. Therefore, in order to protect the interest of revenue, the assessing officer made addition of Rs. 27,74,608/- being the value of Fine Gold weighing 910.24 grams in the hand of the assessee on protective basis as substantive assessment is to be made in the cases of M/s. Global Jewels India Ltd, New Delhi and Jiya Gems Pvt Ltd, New Delhi. However, during the appellate proceedings, the assessee has submitted a copy of the assessment order dated 19.05.2021 in the case of **M/s. Global Jewels India Limited, New Delhi** for AY 2018-19 passed u/s 143(3) by ACIT Central Circle-7, New Delhi wherein the entire Fine Gold of 560.24 grams valued at Rs.17,05,744/- meant for the assessee has been brought to tax and added to the total income, A copy of the order dated 19.0-5.2021 is appended as Annexure-A, forming part of this order. The relevant part of the order is reproduced as under:

> *"4.8 In view of the above, it is thus **very** clear that the gold and jewellery seized by the department from Shri Surest Kumar & Shri Jagdish Prasad employees of Jai Mata DIAir Service and Bright Couriers of Rajkot on 27.10.2017 was not a part of its stocks but was unaccounted and acquired from undisclosed sources. The assessee has not been able to prove that the Imported/country made gold was purchased by it from M/s Bankuiramana Bullion and Diamond P. Ltd on 26.10.2017 and was a part of its stock on that c/ate. No Material issue Vouchers were not issued by the assesses at the time*

> *of booking the gold through courier nor were any statutory GST Form No. 402/403 issued by the Rajkot based parties in respect of the seized gold/ornaments. The entries made in the books of accounts therefore are clearly made as an afterthought to somehow show that the seized gold was accounted for. But the assesses has miserably failed to do so. Accordingly, the value of the seized stocks of gold amounting to Rs.58,55,549/- is added to the income of the assesses u/s 69A of the I. T. Act, 1961."*

From the assessment order passed in the case of M/s. Global Jewels India Limited, New Delhi for AY 2018-19, it was observed by ld.CIT(A) that the Assessing Officer has categorically given the finding that the Fine Gold weighing 560.24 grams sent to the assessee actually belonged to M/s, Global Jewels India Limited, New Delhi and addition has been made in that case holding that it was not a part of its stocks but was unaccounted and acquired from undisclosed sources. Therefore, as the amount of Rs.17,05,744/- of the Gold seized has already been added in the hands of sender, the protective addition made in the hands of the assessee do not survive. Therefore, the addition of **Rs.17,05,744/-** was deleted by ld.CIT(A).

5. So far as the gold seized of 350 gms valued at Rs.10,68,864/- is concerned, the assessee has not submitted any evidence(s) to explain the fate of the gold, claimed to be sent by M/s. Jiya Gems Pvt Ltd, New Delhi for job-work purpose despite giving various opportunities. Since the assessee had failed to substantiate with documentary evidences, the ownership of the gold claimed to be received from Jiya Gems Pvt Ltd, the action of the assessing officer in treating the fine gold valued at Rs.10,68,864/- as unaccounted investment and adding it to the total income of the assessee u/s. 69A of the Act on protective basis was confirmed Learned CIT(A).

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before this Tribunal.

7. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record.Learned Counsel for the assessee submitted that the assessee is engaged in the business of manufacturing of Gold Ornaments on job work basis along with trading of gold jewellery / ornaments. In the course of his business, supplier / consignor namely M/s **Global Jewels India Limited, New Delhi** has sent him Fine gold weighing 560.240 grams for job work valued at Rs 17,05,744/- and supplier / consignor namely **Jiya Gems Private Limited, New Delhi** has sent him Fine Gold weighing 350.00 grams for job work valued at Rs. 10,68,864/- through M/s. Bright Courier Service and transported through Jet Airways, which was seized by the Department from the possession of courier person / delivery man.The assessing officer alleged that the assessee as well as senders of Gold, i.e., M/s Global Jewels India Limited and M/s Jiya Gems Private Limited, have failed to establish the genuineness of the transaction and the documents submitted is nothing more than a futile effort for coloring the unaccounted transactions vi-a-vis transfer of unaccounted gold bullion. However, since the assessee was not owner of the Gold seized, the assessing officer made protective addition in the hands of the assessee as the substantive addition, if any made / would be made in the case of owner / supplier / consignor of Gold. In connection, Ld.Counsel argued that the allegations made by the assessing officer in the assessment order are merely on the surmises and conjectures. In fact, during the post-search investigation, the assessee appeared before the Ld. DDIT (Investigation), Unit-2, Rajkot and clarified the facts with supporting evidences, that is, metal issue voucher issued by the supplier, name and address of supplier, PAN / GST of the supplier etc. It is given to understand that, on the basis

of details submitted by the assessee, an inquiry was also initiated in the case of supplier's by Id. ADIT (Inv), Unit 5(3), Delhi. The supplier M/s Global Jewels India Limited had categorically accepted the fact of supplying Fine Gold by them to the assessee for job-work purpose.In view of the above, it is an undoubted fact that the Fine Gold and ornaments seized weighing to 560.240 grams was supplied to the assessee by M/s Global Jewels India Limited, Delhi and the purpose of said supply was on account of job-work. Similarly, Fine Gold seized weighing to 350.00 grams was supplied to the assessee by M/s. Jiya Gems Private Limited, New Delhi and the purpose of said supply was on account of job-work, i.e., making of Gold Jewellery. Therefore, when the owners of Fine Gold seized were identified and when the owners himself accepted that the said Fine Gold is belonging to them, addition made in the hands of the assessee is totally unjustified and invalid.On the other hand, Ld. DR for the Revenue relied on the order of the Assessing Officer.

8. I note that substantive addition has been made in the hands of the real owner of the Gold and the assessee was only just job worker. The real owner of gold has also took the responsibility to pay the tax. Therefore, addition made by the Assessing Officer based on protective basis in the hands of the assessee should be deleted. I note that in the hands of the real owner M/s. Jiya Gems Pvt. Ltd., for A.Y. 2018-19 vide order dated 31.12.2019 of the Assessment Order wherein the Assessing Officer has stated as follows:

> *"5. In response to Notice u/s 153C of the Act, the assessee company has not filed its return of income u/s 153C and nor filed any reply to treat original return filed u/s 139 of the Act as correct return filed in response to the notice u/s 153C of the Act. Notice u/s 142(1) of the IT Act dated 28.12.2019 was issued along with the detailed questionnaire which is reproduced below:*
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> *.....*
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> *The fact that unaccounted gold weighing at 480.760 grams was seized by the Investigation Wing of the Income-tax department, Rajkot, allegedly claimed to have been sent by the assessee company to Divyesh V Patadiya (PAN: ATMPP6319G) remains uncontroverted leading the undersigned to arrive at the*

conclusion that it constituted its unexplained income, the undersigned being not satisfied with the explanation offered by it. In view of the above, the amount of Rs.14,54,299/- on account of unaccounted gold weighing at 480.760 Grams seized by the Investigation Wing, Rajkot, claimed to be sent by the assessee company to Divyesh V Patadiya (PAN: ATMPP6319G) is treated as unaccounted income of the assessee and being added to the total income of the assessee under the provisions of the section 69A r.w.s. 115BBE of the Income Tax Act, 1961 for the year under consideration."

9. Therefore, from the above assessment order it is abundantly clear that the substantive addition had already been made in the hands of the real owner, M/s. Jiya Gems Pvt. Ltd, by the assessing officer. Therefore, on the basis of the same quantity of Gold, the protective addition should be deleted in the hands of the assessee under consideration. Therefore, I note that protective addition on account of the same Gold and jewellery should not be made in the hands of the assessee, as the addition had already been made in the hands of the real owner,(M/s. Jiya Gems Pvt. Ltd), noted above. Since M/s. Jiya Gems Pvt. Ltd, had accepted the ownership of the Gold, therefore, I delete the protective addition in the hands of the assessee.

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

Order is pronounced in the open court on 11/12/2025

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot
दिनांक/ Date: 11/12/2025
Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order
Assistant Registrar/Sr. PS/PS
ITAT, Rajkot