

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.712 to 714/Ind/2017

Assessment Year 2000-01 to 2002-03

Shri Gopal Krishna Soni, Jeevaganj, Near Bhuriya Mahadev Mandir, Mandsaur	Vs.	ACIT, Ratlam
(Appellant)		(Respondent)
PAN AEMPS0957E		

Revenue by	Shri K.G. Goel, Sr.DR
Assessee by	Shri Ravi Sharda, Advocate
Date of Hearing	10 04.2019
Date of Pronouncement	14.05.2019

ORDER

PER MANISH BORAD, AM.

The above captioned three appeals are filed at the instance of assessee pertaining to Assessment Year 2000-01 to 2002-03 and are directed against the orders of Ld. Commissioner of Income Tax (Appeals) (in short 'Ld.CIT(A)'), Ujjain dated 01.08.2017, which are arising out of the order u/s 143(3)/148 of the Income Tax Act 1961 (In short the 'Act')

dated 21.02.2006, 27.02.2004 and 31.3.2005 framed by ACIT & Addl. CIT, Ratlam respectively.

2. As these appeals relates to the same assessee these were heard together and being disposed off by this common order for the sake of convenience and brevity.

3. Briefly stated facts as culled out from the records are that the assessee is engaged in the jewellery business in the name of Poonam Jewellers at Mandsaur. Survey u/s 133A of the Act was carried out at the assessee's business premises on 27.12.2001. Various incriminating materials were found. Assessee offered undisclosed income of Rs.5,00,000/- and Rs.15,00,000/- for Assessment Year 2001-02 and 2002-03. Return of income were filed and assessment proceedings were carried out as per the provisions of law after serving the statutory notices and various additions were made against which assessee preferred appeal before Ld. CIT(A).

4. Now the assessee is in appeal before the Tribunal raising various grounds against separate orders of Ld. CIT(A) confirming various additions for the tree Assessment Years and the same are adjudicated in the forthcoming paragraphs:-

5. We will first take up ITA No.712/Ind/2017 for Assessment Year 2000-2001. Following appeals have been raised by the assessee.

Grounds of appeal set out below are without prejudice to each other:-

Ground No.1: The Ld. Commissioner of Income Tax (Appeals) (here in after referred as CIT(A) has erred in confirming alleged income of Rs.11,10,000/- in the hands of the assessee, which in fact does not belong to the assessee, on conjecture, surmises and suspicion.

Ground No.2: The Ld. CIT(A) has erred in levy of charging interest u/s 234A at Rs.36,362/- u/s 234B at Rs. 2,94,591/- u/s 234C at Rs. 1,411/- and u/s 220(2) at Rs. 4,61,846/-.

The appellant craves leave to add, alter and/or amend any grounds of appeal.

6. Brief facts relating to impugned addition Rs.11,10,000/- made for 2000-01 are that during the course of survey u/s 133A of the Act, survey team impounded a dairy namely “Neelgagan” at Mayur Nagar premises from the almirah of the “Karigar” named Shekh Sultan. During the course of assessment proceedings it was submitted that the alleged diary belongs to the employee having some transaction of “Doda Choorā” which have no connection with the assessee. There is no mention of assessee’s name, business transaction in this diary nor any date or signature are mentioned. It was further contended that the alleged diary is merely a dumb document for which no addition should have been made. Ld. A.O

however was not satisfied and against the returned income of Rs.2,36,842/- declared by the assessee made addition of Rs.11,10,000/- for unexplained investments and addition of Rs.1,13,158/- was made for non production of books accounts. Against these additions appeal was preferred before Ld. CIT(A) and assessee partly succeeded in getting the relief of deleting the addition of Rs.1,13,158/-, however CIT(A) confirmed the addition of unexplained investment at Rs.11,10,000/-.

7. Now the assessee is in appeal before the Tribunal raising sole issue challenging the addition of Rs.11,10,000/- confirmed by Ld. CIT(A).

8. Ld. Counsel for the assessee referred and relied on the following written submissions placed before us during the course of hearing.

“Ground No. 1: The Ld. Commissioner of Income Tax (Appeals) {here in after referred as CIT(A)} has erred in confirming alleged income of Rs.11,10,000/- in the hands of the assessee, which in fact does not belong to the assessee, on Conjecture, Surmises and Suspicion.

Brief facts of the case are that the assessee is engaged in jewelry business in the name of M/s Poonam Jewelers at Jeevaganj, Mandsaur. Assessee has filed his return on 28.03.2001 showing income at Rs.2,36,842/-, copy in Paper book at Page 1-8. There was a survey carried out u/s 133A on 27/12/2001, copy of S.A. recorded under survey proceedings is in Paper book at page 9- 13. In S.A. assessee stated that there was a theft at his business premises on 20/08/2001 in which jewelry and books were taken away by thief's for which a police FIR longed, copy of the FIR is at page 14 - 17. After that, shop was closed for 2

months for making strong room. In SA, assessee also stated that some of the jewelry are also made at a house in mayur nagar colony by our karigars, those karigars resided also there, in survey proceedings a spiral diary named as Neelgagan found at Mayur Nagar premises from the almirah of karigar, Shekh Sultan in which their clothes are kept. Survey team seized the diary and got its pages signed from Shekh Sultan, kari :ar and recorded his SA, copy of SA at page 18-20.

Your honours kind attention is drawn that this diary has not been found from of the possession of the assessee, it has been found from the possession of Shekh Sultan, as also evident from his statement. AO made an alleged addition of Rs. 11,10,000/- as investment from undisclosed sources under presumptions and surmises and wrong notion, without any concrete correlated evidence narrating that some transactions relates to doda chura business\and there is an investment in the name of assessee, which is confirmed by CIT(A). It is also stated that this additions of Rs. 11,10,000/- is made on a dumb document, copy of same is in P. book at page 21 and no corroborative evidence was found to support the finding of A O. and no person is examined : to prove the document. It does not carry any date as well as signature of the assessee, no transaction or specified details are there in the said paper, in that paper, it is only written as 'Gopalji' which is not having any date or signature of the assessee, no transaction is disclosed in the said paper. It is a document which has not been found from the possession of assessee, it is found from the Shekh Sultan which he has also confirmed the same in his S.A. recorded. Considering the above facts no addition could be made on such a document even if it is recovered from the office premises of the assessee. Diary neither belongs to assessee nor seized from the assessee and it has no connection with the assessee. It is a settled law that if the assessee denies the information collected by revenue., then the revenue has to satisfy himself by making independent enquiry from the sources considered reliable by it and decide whether information passed on to it is true

or not? If he reaches to the conclusion that the information received by him is true, he has to provide reasonable opportunity of rebutting it before to act thereupon. He has no right to burden the assessee with an extra amount of tax on vague information without verifying its reliability. The same can not be foisted upon the other party in the absence of sufficient corroboratory material. Under the above narrated facts the alleged addition of Rs.11,10,000/- are liable to be deleted.

Relied on :- (1) A.C.I.T. vs. Raj Homes Pvt. Ltd. - 13 ITJ 658 p.p. 704 Ind.

(2) A.C.I.T. vs. Shri Sharad Doshi - ITA no. 537/INDI 2015 dt.
23/12/16

Assessee has categorically stated at every stage that seized material does not belong to him. Revenue is not able to unearth any background with regard to the alleged business like Doda Churi etc. or any corroborative evidence thereof. Doda Churi license is in the name of some 'Govindram Gopilal Joshi', copy of the said licence is in PB at Page 22 - 24. Revenue has not traced and examined any of the person whose names were found in the seized material. Aforesaid notebook has unsigned documents. AO has not established any nexus between the notebook / loose documents and business of the assessee. There is no narration regarding the address of the assessee. No addition can be solely made on the basis of seized material in absence of any other corroborative material to prove that assessee has carried on such alleged business. Besides that assessee was not provided opportunity to cross examine the parties whose statement were relied upon by the AO while making the assessment. Assessee apprehends that somebody might have planned to harass the poor assessee with an intention to involve the assessee to look very suspicious. It is clear that entries made in the diary are imaginary, concocted and unrealistic transactions which not at all related to the assessee. Assessee affirm that diary does not belong to him, the presumption can be applied only against the person in whose

possession the said diary was found. Additions made on the basis of jottings in the diary are neither legally sustainable nor factually maintainable. AO & CIT(A) had failed to consider legal aspects properly and making inanity about the names noted in the diary and failed to examine while considering evidentiary value of the diary. No such alleged addition can be made on the basis of surmises, conjecture & surmises.

Relied on :- (1) Dhakeshwari Cotton mills vs. CIT - 26 ITR 775 SC (2) Umacharan Shaw & Bros. vs. CIT - 37 ITR 271 SC (3) CBI vs. V. C. Shukla- 3 SCC 410 SC

Your honours further kind attention is also drawn towards the facts that assessee was gunshot in Year 2004 and due to the said incident he was paralyzed from 2004 and confined to bed and his jewelry business also closed and is surviving on God mercy only and on verge of so many non curable deceases and no one is there to succeed and help him at this juncture because of illness and also not able to pay any such demand alleged / artificially created against him. All these facts were also stated in remand report received along with S.A. of the assessee dated 23/02/16 confirming his status. A certificate of 100 'Viklangta' is also attached with remand report to demonstrate the same. Copy of same at P book Page 32 - 36.

9. Per contra Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities.

10. We have heard rival contentions and perused the records placed before us. The assessee has challenged the finding of Ld. CIT(A) confirming the addition for unexplained investment of Rs. 11,10,000/-.

We observe that the assessee is in the business of jewellery and is offering profits from the business of sale of gold and silver jewellery from past many years. Apart from running the shop assessee also carries manufacturing process at his residential premises at Mayur Nagar where “karigars” perform manufacturing process. During the course of survey conducted u/s 133A of the Act spiral diary named “Neelgagan” was found in the almirah which is normally used by employees for keeping clothes as the “karigars” normally change their dress while working. This diary was impounded from Shekh Sultan and his signature were taken by the survey team. In the alleged diary various transactions relating to “doda chura” business are mentioned. There was no details of any transaction of gold and silvery jewellery business or any reference of assessee’s proprietorship concern or assessee’s name or his signature. Further investigation reveals that “doda chura” business licence is in the name of one Govindram Gopilal Joshi which is placed at page 22 to 24 of the paper book. We also find that no nexus have been established by the Ld. A.O between the impounded note book and the books of accounts maintained by the assessee. During the course of appellate proceedings remand report was sought by Ld. CIT(A) about the current whereabouts of Mr. Govindram Gopilal Joshi who is claimed to be owner of the

impounded diary. Report of the Inspector was submitted mentioning that Mr. Govindram Gopilal Joshi expired on 27.2.2005 and in support copy of the death certificate was also placed.

11. These series of facts clearly proves that the impounded dairy “Neelgagan” found from the possession of assessee’s employee has no corroboration with the business transactions of the assessee and for the purpose of assessing the income in the hands of the assessee the alleged dairy is to be categorised as dumb document.

12. Hon’ble Apex Court in the case of K.P. Verghese vs. ITO (1981) 131 ITR 597 held that *mere seizure of note books of documents at the personal residence of an employee would not conclude the issue against the employer company that the “on money” has been received by the employer company.* In another judgment of Hon’ble Apex Court in the case of Dhakeshwari Cotton Mill Pvt. Ltd v/s CIT (1954) 26 ITR 775 it was held that *“while making an assessment there must be something more than the bare suspicion to support the assessment”.*

13. We, therefore in the totality of facts and respectfully following the above judgments are of the considered view that both the lower

authorities were not justified in confirming the addition of Rs.11,10,000/- for unexplained investment on the basis of impounded dairy which in our view is merely a dumb document and such addition is made merely on presumption and surmises without establishing any concrete correlation with the regular business transaction carried out by the assessee. We therefore delete the addition of Rs.11,10,000/- and allow the assessee's Ground No.1.

14. Ground No.2 relating to levying of interest u/s 234A, 234B, 234C and 220(2) of the Act is consequential and general in nature.

15. Accordingly appeal of the assessee for 2000-01 is allowed.

16. Now we take up Appeal No. 713 & 714/Ind/2017 for Assessment Years 2001-02 & 2002-03 in which following grounds of appeal have been raised;

Assessment Year 2001-02

Grounds of appeal set out below are without prejudice to each other:-

Ground No.1: The Ld. Commissioner of Income Tax (Appeals) has erred in rejecting the books of accounts u/s 145, arbitrarily on presumption without pin pointing any specific discrepancy.

Ground No.2: The Ld. CIT(A) (here in after referred as CIT(A) has erred in confirming alleged income from business of Rs.5,98,905/- as against actual

income declared income at Rs. 1,095/- after considering the surrendered income of Rs.5,00,000/- during the survey carried u/s 133-A arbitrarily.

Ground No3: The Ld. CIT(A) has erred in levy of charging interest u/s 234B at Rs. 82,517/- and u/s 220(2) at Rs. 4,38,453/-

The appellant craves leave to add, alter and/or amend any grounds of appeal.

Assessment Year 2002-03

Grounds of appeal set out below are without prejudice to each other:-

Ground No.1: The Ld. Commissioner of Income Tax (Appeals) has erred in rejecting the books of accounts u/s 145, arbitrarily on presumption without pin pointing any specific discrepancy.

Ground No.2: The Ld. CIT(A) (here in after referred as CIT(A) has erred in confirming alleged income from business of Rs.17,71,151/- as against actual income declared income at Rs. 2,71,151/- after considering the surrendered income of Rs.15,00,000/- during the survey carried u/s 133-A arbitrarily.

Ground No3: The Ld. CIT(A) has erred in levy of charging interest u/s 234B at Rs. 1,63,598/-, u/s 234C at Rs.2,720/- and u/s 220(2) at Rs. 8,51,886/-

The appellant craves leave to add, alter and/or amend any grounds of appeal.”

17. Briefly stated facts as culled out from the records relating to these two appeals are that post survey u/s 133A of the Act, assessee filed income tax returns for Assessment Year 2001-02 & 2002-03. The undisclosed income surrendered during the course of survey u/s 133A of the Act at Rs.5,00,000/- and Rs.15,00,000/- were duly offered to tax in the computation of income but as the assessee claimed to have suffered

loss in the business same and was set it off against the undisclosed income, the resultant total income was disclosed at Rs. 1095/- and Rs.2,71,151/- for Assessment Year 2001-02 and 2002-03 respectively. Ld. A.O while conducting the assessment proceedings made reference to various incriminating material found during the course of survey which included the documents relating to payment for labour charges, purchases and other slips and loose papers containing details of the transactions which assessee was unable to correlate with the books of accounts. Ld. A.O on observing that as the documents and loose papers found during the course of survey did not find any nexus with books of accounts maintained by the assessee, the same are liable to be rejected u/s 145(2) of the Act and accordingly estimated the income for Assessment Year 2001-02 at Rs.6,00,000/- inter alia including the amount offered during the course of survey of Rs.5,00,000/- and for Assessment Year 2002-03 at Rs.17,39,860/- inter alia including Rs.15,00,000/- offered by the assessee as undisclosed income during the course of survey.

18. Aggrieved with these additions assessee preferred appeal before Ld. CIT(A) but failed in getting any relief for Assessment Year 2001-02 and partly succeeded in Assessment Year 2002-03.

19. Now the assessee is in appeal before the Tribunal for both the Assessment Years against the addition confirmed for Rs.5,97,000/- and Rs.15,00,000/- for Assessment Year 2001-02 and 2002-03 respectively.

20. Ld. Counsel for the assessee referring to the written submissions made before the lower authorities submitted that the income of Rs.5,00,000/- and Rs.15,00,000/- surrendered during the course of survey u/s 133A of the Act have been duly offered to tax in the computation of income. Genuine loss suffered in the business have been set off against the surrendered income. Regular books and accounts are maintained for Assessment Year 2001-02 and 2002-03 and financial statements are duly audited u/s 44AB of the Act. No major discrepancy have been noticed by Ld. A.O in the books of accounts nor any corroborative evidence have been brought on record confirming the addition and prayed for deleting the addition confirmed by Ld. CIT(A).

21. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities and also submitted that the assessee was earning normal business profits up to 2000-01 showing Gross Profit @24.54% for gold jewellery turnover and 15.5% for silver jewellery turnover but in the subsequent assessment years there has

been sharp fall in the Gross Profit rate for which no reasons have been provided by the assessee during the course of assessment proceedings, therefore books have been rightly rejected and profits have been estimated.

22. We have heard rival contentions and perused the records placed before us. Assessee in these appeals for Assessment Year 2001-02 and 2002-03 has challenged the finding of Ld. CIT(A) confirming the addition of Rs.5,97,000/- and Rs.15,00,000/- towards estimation of income from business and undisclosed income surrendered during the course of survey.

23. We observe that during the course of survey carried out u/s 133A of the Act various incriminating material were found which the assessee could not explain during the course of survey proceedings. He therefore admitted the undisclosed income of Rs.5,00,000/- and Rs.15,00,000/- for Assessment Year 2001-02 and 2002-03 and agreed to offer it for tax in the regular return of income to be filed subsequent to the survey proceedings.

24. Subsequently for Assessment Year 2001-02 return of income from business was submitted on 31.03.2002 declaring total income of Rs.1095/- and agriculture income of Rs.43,782/-. In the computation of income under the head "business income" was also mentioned the surrendered amount of Rs.5,00,000/- made during the survey u/s 133A of the Act. For Assessment Year 2001-02 assessee has shown net loss of Rs.4,63,554/- before claiming depreciation.

25. As regards Assessment Year 2002-03 total income of Rs.2,71,151/- was declared. Loss from business before claiming depreciation has been shown at Rs.11,71,113/-. This loss has been set off against surrendered amount at Rs.15,00,000/

26. Common facts arising out of the computation of income and financial statement for Assessment Year 2001-02 and 2002-03 are that assessee has shown loss from business and the surrendered income has been set off against the business loss and after claiming depreciation at fixed assets total income at Rs.1095/- and Rs.2,68,498/- has been offered to tax for Assessment Year 2001-02 and 2002-03 respectively. Ld. A.O while conducting the assessment proceedings made specific observations that various incriminating material including loose papers

and slips containing transactions of purchases, sale, expenses, detail of creditors were found but assessee failed to corroborate them with the regular books of accounts. These reasons were sufficient for the Ld. A.O to reject the books of accounts u/s 145(2) of the Act and we find no inconsistency in this view taken by Ld. A.O of rejecting books of accounts. Now when the books and accounts are rejected, profit needs to be estimated. Revenue authorities have not disputed gross turnover shown by the assessee. Ld. A.O while examining the computation of income and making other observations as mentioned above found that taxes have not been paid on the surrendered amount rather the assessee has set off the business loss against surrendered income. For this reason profits were estimated along with making addition for the surrendered amount.

27. Now as far as surrendered amount of Rs.5,00,000/- and Rs.15,00,000/- are concerned there remains no dispute that these amounts are shown in the computation of income and offered to tax. In the balance sheet filed before us under head loans and advances an amount of Rs.20,00,000/- has been shown as “amount declared at the time of survey to be adjusted at the time of assessment”. The reason and the explanation for showing this surrendered amount under the head

loans and advances is best known to the assessee but certainly lacks the display as per the prevailing accounting methods. Since we have already held that the books of accounts of the assessee were rightly rejected u/s 145(2) of the Act then the income needs to be estimated for the year under appeal.

28. For Assessment Year 2000-01 in the trading and Profit & loss account filed by the assessee, gross profit @ 24.54% is declared on the gross turnover of gold jewellery at Rs.20,81,766/- and gross profit rate @15.56% has been shown on the turn over of silver jewellery at Rs.1,60,442/-. Ld. A.O has accepted these results. Now we move to Assessment Year 2001-02. We find that the gross profit rate on sale of gold jewellery has come down to 14.85% on the turnover of Rs.30,79,211/- whereas the gross profit rate of silver jewellery remains almost same at 15.72% on the turnover of Rs.3,51,177/-. The Gross turn over for 2001-02 is totalling Rs.31,14,388/-. Assessee is in the retail business and gross turnover is less than Rs.40 lakhs. Though tax audit u/s 44AB of the Act has been conducted but since specific defects have already been pointed out in the books of accounts, in these circumstances we in view of the provisions of Section 44AF of the I.T. Act

which provides for presumptive taxation on the retail trade business @ 5% of gross turn over or the books profit whichever is higher, inclined to hold that the net profit @5% of the total turnover of Rs.31,14,388/- should be treated as the net profit of the year i.e. Rs.1,55,720/-. As the assessee has shown the net loss of Rs.2,44,123/-. The net addition to be confirmed will stands at Rs.3,99,843/- as against Rs.5,98,905/- confirmed by Ld. CIT(A). Assessee gets part relief and accordingly Ground No.1 of the assessee's appeal stands dismissed and Ground No.2 is partly allowed. Ground No.3 is general and consequential in nature.

29. As far as Assessment Year 2002-03 is concerned for which addition of Rs.15,00,000/- have been confirmed by the Ld. CIT(A), we find that the Gross turnover of gold jewellery has increased to 49,24,657/- and sale of silver jewellery at Rs.1,70,996/- but the gross profit of gold jewellery has crashed down to 6.4% whereas in silver jewellery business loss has been claimed. We applying the view as taken for Assessment Year 2001-02 hold that the books of accounts were rightly rejected u/s 145(2) of the Act for the discrepancies observed by the lower authorities in the books of accounts as discussed in preceding paras and as regards estimation of profit is concerned we find that the sales of gold jewellery business has

increased from Rs.20,81,766/- in the Assessment Year 2000-01 to Rs.49,24,657/- during Assessment Year 2002-03. Average gross profit rate for Assessment Year 2000-01 to 2002-2003 will come to 15%, i.e. the average of gross profit of 3 years i.e. 24.54%, 14.85% and 6.47% respectively. So in the interest of justice and in the totality of facts 15% gross profit rate if applied on the turnover of the gold jewellery items will meet the ends of justice for estimation of profits on sale of gold jewellery and same will work out to be Rs.7,38,699/- against which Rs.3,18,703/- has been shown as gross profit by the assessee which will sustain the addition of gross profit at Rs.4,19,996/- approx.

30. However as regards silver jewellery items assessee had been regularly declaring around 15% of gross profit rate but for Assessment Year 2002-03 loss has been declared. The rate of silver per kg has not increased or decreased drastically. From the information available on internet the rate of silver per kg as on 31.03.2011 is Rs.7200 and on 31.03.2002 Rs.7875 per kg which means there is increase in the rate of silver therefore the loss shown by the assessee cannot be attributed to the fluctuation in prices. No other reason has been placed before us for this decline. Therefore we are inclined to apply gross profit of 15% on the

sale of silver jewellery at Rs.1,70,996/- i.e. Rs.25,650/-against the loss shown at Rs.2,34,441/-.

31. With the application of gross profit rate at 15% on the turn over disclosed by the assessee the addition in gross profit will be Rs.6,80,087/- (Rs.4,19,996 + Rs. 2,60,091) and net loss shown by the assessee in the profit and loss account at Rs.8,99,870/- will thus come down to Rs.2,19,783/-. This will reduce the claim of loss by the assessee by Rs.6,80,087/- and will increase the total income of the assessee by this amount. Accordingly against the addition of Rs.15,00,000/- confirmed by Ld. CIT(A), we sustain the addition to Rs.6,80,087/- and delete the remaining amount of addition at Rs.8,19,913/- and partly allow assessee's Ground No.2. Ground No.1 of the appeal relating to the rejection of books already stands dismissed and Ground No.3 consequential and general in nature.

32. In the result appeal of the assessee for Assessment Years 2000-01 is allowed and appeal for Assessment Year 2001-02 & Assessment Year 2002-03 are partly allowed.

The order pronounced in the open Court on 14.05.2019.

Sd/-

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

**(MANISH BORAD)
ACCOUNTANT MEMBER**

दिनांक /Dated : 14 May, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore