

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. Nos. 1395 & 1396/Kol/2023**  
**Assessment Year: 2017-18**

Jewel India Jewellers  (PAN: AACFJ 4832 H)	Vs.	DCIT, CC-4(4), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	22.02.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.03.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. M. Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri Abhijit Kundu, CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

These are the appeals preferred by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals)-27, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 31.10.2023 for the AYs2017-18.

2. The assessee has raised following grounds of appeal:

*i) For that the Ld. CIT(A) erred in dismissing the appeal as withdrawn ignoring the submissions filed and noting that the assessee has opted for VSV*

*Scheme when there was no such withdrawal nor was there any representation that the assessee has opted for VSV.*

*ii) For that the Ld. CIT(A) should have held that the undisclosed income of Rs. 1,09,39,517/- already offered to tax under the head business income should have been assessed as business income and not income from other sources.*

*iii) For that on the facts and circumstances of the case, the order of the Ld. CIT(A) be modified and relief be provided to the assessee.*

3. Issue raised in ground no. 1 is against the order of Ld. CIT(A) dismissing the appeal as withdrawn by ignoring the submissions filed by the assessee and observing that assessee has gone into VSV scheme. As a matter of fact the assessee has not opted for VSV scheme. In the second ground the assessee has challenged the order of Ld. CIT(A) upholding the order of AO wherein the income of the assessee of Rs. 1,09,39,517/- which has offered to tax under the head business income was treated as income from other source in accordance with provisions of Section 68 of the Act read with 115BBE of the Act.

4. Facts in brief are that the survey action u/s 133A of the Act was conducted in the business premises on the assessee which was followed by search action on Jewel India Group and the assessee being the flagship concern of the group was also covered in the said search. The assessee has filed return of income originally on 14.10.2017 u/s 139(1) of the ACT declaring total income of Rs. 9,49,28,940/-. During the course of search, certain incriminating documents were found and seized and accordingly the assessee voluntarily disclosed Rs. 2.00 crores with reference to seized documents. The assessee is mainly engaged in the business of manufacturing of ornaments and jewelry. During the course of assessment proceedings, the AO adjusted the cash discrepancy of Rs. 19,10,931.65/- and excess stock amount of Rs. 71,49,551/- aggregate of Rs. 90,60,482/- and after deducting the same from the disclosure made of 2.00 crores, the remaining of Rs. 1,09,39,517/- was treated as income qua which the assessee has not disclosed the nature and source of income and came to the conclusion that such income has to be treated as unexplained income u/s 68 read with Section 115BBE of the Act as the assessee has not offered or explained the nature and source of income.

Accordingly the assessment was framed vide order dated 31.12.2018 u/s 143(3) of the Act charging the tax @ 30%.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee as withdrawn on the wrong understanding of facts that the assessee has availed VSV scheme.

6. After hearing the rival contentions and perusing the material on record, we find that a search action was conducted on the assessee and certain incriminating material/documents were found and seized. It is also undisputed that the assessee has disclosed 2.00 cr. with reference to those seized documents. The assessee is a the partnership firm and is engaged in the business of manufacturing and trading in ornaments. We note that apart from business of manufacturing of jewelry , the assessee is not having any other line of business or source of income. The Ld. D.R strongly and vehemently prayed before the Bench that since the Ld. CIT(A) has dismissed the appeal though on the wrong understanding of facts that the assessee has availed VSV scheme but the undisputed facts remain that the assessee,s case has not been decided on merit before the Ld. CIT(A) and therefore needs to be referred back to the file of Ld. CIT(A) for adjudication. The Ld. D.R has made without prejudice the argument that part of the disclosure which was not explained by the assessee as to the nature and source of income was rightly treated u/s 68 read with Section 115BBE of the Act and therefore on this count alone ,the order of AO may be confirmed. Whereas the Ld. A.R on the other hand submitted that where all the facts qua the issue raised by the assessee were before the Ld. CIT(A) which were overlooked completely and the appeal was dismissed on wrong notion and understanding of facts. Even then the Ld. A.R argued that this tribunal may decide the issue on merit as there is no bar on deciding the issue on merit when the same was not decided by the Ld. CIT(A) despite of having all the facts and contentions of the assessee before him. The Ld. A.R in defense of argument relied on the series of judgments namely *United Commercial Bank v. Commissioner of Income-tax* in [1982] 137 ITR 434 (Cal) and *M.G. Sahani & Co. vs. Collector of Central Excise* in [1994] 73 ELT 3 (SC) .

7. Considering the rival contention and facts available on record, we are of the view that restoring the issue to the file of Ld. CIT(A) would unnecessary waste of time and effort of the department as the case at hand is clear and conspicuous. The assessee is engaged in business of manufacturing and trading in ornaments and was not having any other source of income. The documents seized from the assessee followed by disclosure of Rs. 2.00 Cr which has been shown the income in the profit and loss as income. According to the AO, the assessee has adjusted Rs. 19,10,931/- in respect of cash discrepancy and Rs. 71,49,551/- towards stock difference and the balance amount remains as income the source of which is unexplained. In our opinion to treat the same as income of the assessee derived from a source other than the business activity of the assessee would be nothing but assessing the income on surmises and conjectures when the assessee has made disclosure with reference to seized documents and disclosure was shown as other undisclosed income in the profit and loss account. Therefore we do not subscribe to the conclusion drawn by the AO that the assessee has not offered any explanation about nature and source of income. In our opinion, the provisions of Section 68 read with Section 1115BBE of the Act were wrongly invoked. We would also like to refer the language of section 68 of the Act which begins with the words where any sum is found credited in the books of account maintained by the assessee in the previous year and the assessee offered no explanation about the source and nature and only then the provisions of Section 68 can be invoked but in the present case there is no sum credited in the books but an income disclosed during the course of search with reference to incriminating material was shown to which the provisions of Section 68 cannot be invoked. The case of the assessee is squarely covered by the decision of Co-ordinate Bench of Chandigarh Bench in the case of Shri Bhuwan Goyal vs. DCIT in ITA No. 1385/Chd/2019 for AY 2017-18 wherein the Co-ordinate Bench has held as under:

*“10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is not in dispute that the assessee surrendered the income of Rs. 3.64 Crores in the statement recorded under [section 132\(4\)](#) of the Act the said surrender was made on the basis of the entries in the pocket diary found & seized during the course of search in which certain transactions relating to the Real Estate business were*

noted and profit as well as commission was earned thereon. The aforesaid facts had been mentioned by the A.O. at page no. 4 of the assessment order dt. 30/12/2018 wherein copy of the show cause notice dt. 26/12/2018 has been reproduced. However the A.O. considered only an income of Rs. 2.64 Crore earned from the Real Estate Business but did not accept Rs. 1 Crore and added the same separately under [section 69](#) of the Act. The A.O. charged the tax @ 60% under [section 115BBE](#) of the Act. The provisions contained in the said section i.e; [115BBE of the Act](#) read as under:

[115BBE.](#) (1) Where the total income of an assessee, -

(a) Includes any income referred to in [section 68](#), [section 69](#), [section 69A](#), [section 69B](#), [section 69C](#) or [section 69D](#) and reflected in the return of income furnished under [section 139](#); or

(b) Determined by the Assessing Officer includes any income referred to in [section 68](#), [section 69](#), [section 69A](#), [section 69B](#), [section 69C](#) or [section 69D](#), if such income is not covered under clause(a), the income-tax payable shall be the aggregate of-

(i) the amount of income-tax calculated on the income referred to in clause(a) and clause(b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause(i).

2. Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause(a) and clause (b) of sub-section (1).

From the aforesaid provisions it would be clear that the provisions of [Section 115BBE \(1\)\(a\)](#) of the Act are applicable to the income which is referred in [section 68](#), [69](#), [69A](#), [69B](#), [69C](#) or [69D](#) reflected in the return of income furnished under [section 139](#) of the Act. However, in the present case no such income was reflected in the return filed under [section 139](#) of the Act rather the income was declared in the return filed under [section 153A](#) of the Act after the search. The assessee declared the income under [section 132\(4\)](#) of the Act and disclosed the same in the return of income filed under [section 153A](#) of the Act. The assessee explained the source of investment of Rs. 1.10 Crore in the reply to Question No. 11 which has been reproduced at page no. 8 of the impugned order by the Ld. CIT(A) and read as under:

" Q. 11. Do you want say anything else ?

Ans: yes, one agreement dated 05/04/2016 was found from residence at the time of search on 31/08/2016 which was executed by Mr. Sumit Thaper on my behalf and Sh. Hernek Singh S/o Sh. Daulat Singh for an amount of Rs. 1,10,00,000/-. Out of this amount of Rs. 10 Lacs was transferred from my bank account to Mr. Sumit Thaper which is duly accounted for (proof of this will be submitted later on) and rest of the amount has been paid in cash. The source of Rs. 1 Cr. Paid in cash are out of commission income and profit earned from real estate transaction in past. However no documentary evidence is available with me. Hence to BUY peace of mind and to avoid litigation. I hereby voluntarily offer Commission income as well as profit earned on real estate transactions as an additional income of Rs. 1 Cr. (One Crore) over and above my normal income for the F.Y. 2016-17 relevant to A.Y. 2017-18 subject to no penal action. I hereby reiterated that these transactions were entered by me in Individual capacity and nothing to do with the company i.e. M/s A.P. Refinery Pvt. Ltd."

The said explanation given by the assessee to the Ld. CIT(A) has not been rebutted, therefore the provisions of [Section 69](#) of the Act were not applicable as the business transactions were recorded in the books of account and the assessee either earned commission or profit on all

*those Real Estate transactions. The income earned from the Real Estate transactions was claimed to be utilized for making the investment in the property. In the present case it is not brought on record to substantiate that the said income was utilized by the assessee elsewhere and not in the investment of the property. Therefore we are of the view that the A.O. was not justified in taxing the aforesaid income of Rs. 1 Crore separately particularly when nothing is brought on record to substantiate that the assessee had made separate investment different from the income earned on real estate transactions recorded in the pocket diary found & seized during the course of search. Accordingly the impugned order passed by the Ld. CIT(A) on this issue is set aside and the A.O. is directed to tax the entire surrendered income of Rs. 3.64 at the normal rate of tax.*

*11. Vide Ground No. 3, the grievance of the assessee relates to the direction given by the Ld. CIT(A) to the A.O. to bring to tax the amount of Rs. 2.64 Crores under [section 115BBE](#) of the Act.*

*12. As regards to this issue Ld. Counsel for the assessee submitted that the Ld. CIT(A) has no power to restore the matter to the A.O. under [section 251\(1\)\(a\)](#) of the Act and if he was satisfied then he should have brought the aforesaid amount to tax under [section 115BBE](#) of the Act himself. It was further submitted that the assessee declared the income from Real Estate business which was recorded in the pocket diary found & seized during the course of search and it was not the investment recorded in the books of account, therefore the provisions of [section 115BBE](#) of the Act were not applicable on the said income of Rs. 2.64 Crores.”*

In view of the above facts and decision of Co-ordinate Bench, we are inclined to direct the AO to delete the disallowance by setting aside the order of Ld. CIT(A). Accordingly the appeal of the assessee is allowed.

8. Now we shall adjudicate in **ITA No. 1396/Kol/2023 for AY 2017-18.**

This appeal has been filed against the order of Ld. CIT(A) which arises out of order passed by the AO u/s 154/143(3) of the Act dated 8.7.2019.

9. Since we have already decided the issue in favour of the assessee in ITA No. 1395/Kol/2023 (supra) wherein we have decided the amount of income shown in the profit and loss which was disclosed during the search operation cannot be treated as unexplained credit u/s 68 of the Act. Therefore our findings would, mutatis mutandis, apply to this appeal as well. Consequently the order of the Ld CIT(A) is set aside and AO is directed accordingly . The appeal of the assessee is allowed.

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

Order is pronounced in the open court on 22<sup>nd</sup> March, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 22<sup>nd</sup> March, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Jewel India Jewellers, 41, Manohar Dass Street, Burra Bazar, Kolkata-700007.
2. Respondent – DCIT, CC-4(4), Kolkata
3. Ld. CIT(A)-27, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata