

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Reserved on : 29th August, 2014
Date of decision: 26th September, 2014

INCOME TAX APPEAL 455/2014

COMMISSIONER OF INCOME TAX-XI Appellant
Through Mr. N.P. Sahni, Sr. Standing Counsel
with Mr. Nitin Gulati, Jr. Standing Counsel.

Versus

RAMA KRISHNA JEWELLERS Respondent
Through Dr. Rakesh Gupta, Advocate.

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CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

SANJIV KHANNA, J.:

This common decision will dispose of the aforestated income tax appeals filed by the Revenue relating to assessment years 2000-01 to 2004-05 and 2006-07. As the issues involved are similar, we are disposing of the

appeals by this order, though the facts of each individual year have been noticed.

2. The respondent-assessee, a partnership firm, was at the relevant time engaged in jewellery business. The assessee was subjected to search and seizure operation under Section 132 of the Income Tax Act, 1961 ('Act', for short) on 20th January, 2006. Residential premises of the partners were also searched. Assessment proceedings under Section 153A of the Act were initiated followed by issuance of notice by the Assessing Officer for filing true and correct return of total income. The assessee vide his letter dated 22nd March, 2007 stated that the returns as filed according to the following table be treated as filed in response to notice under Section 153A of the Act:-

<u>Assessment Year</u>	<u>Return filed</u>	
	<i>Date</i>	<i>Amount (Rs.)</i>
2000-01	31/10/2000	32,030/-
2001-02	31/10/2001	52,560/-
2002-03	31/10/2002	69,225/-
2003-04	28/11/2003	68,258/-
2004-05	01/11/2004	1,79,879/-
2005-06	31/10/2005	1,82,762/-
2006-07	31/10/2006	2,26,15,330/-

3. For the purpose of record, we note that the assessment year 2005-06 is not subject matter of the present appeals and is a subject matter of ITA

461/2014. In ITA 461/2014 relating to assessment year 2005-06, we have issued notice on the addition made by the Assessing Officer of Rs.1,74,17,828/- for unaccounted sales and Rs.99,88,104/- on account of unaccounted purchases.

Disallowance of 50% expenditure/payments to contractors

4. The first issue raised in the present appeals relates to disallowance of 50% of expenditure as declared or shown on account of ‘making charges’ paid to *Karigars*. The details of the said expenditure as declared in the respective assessment years and the *ad hoc* disallowance made by the Assessing Officer of 50% are as under:-

<u>Assessment Year</u>	<u>ITA No.</u>	<u>Total Payments made to <i>Karigars</i> (as claimed) (Rs.)</u>	<u><i>Ad hoc</i> disallowance made by AO (50% of charges claimed) (Rs.)</u>
2000-01	457/14	3,26,439/-	1,63,220/-
2001-02	456/14	4,88,831/-	2,44,415/-
2002-03	459/14	6,87,174/-	3,43,587/-
2003-04	455/14	6,79,915/-	3,39,957/-
2004-05	460/14	7,56,881/-	3,78,440/-
2006-07	458/14	11,57,837/-	5,78,918/-

5. The Assessing Officer held that the assessee had not furnished details of expenses towards ‘making charges’ inspite of letter dated 6th December, 2007. It was observed that the said making charges were partly paid in cash and vouchers with complete address of the *Karigars* to whom

payments were made, were not furnished. Accordingly, 50% disallowance should be made. It may be noted that the assessment order under Section 153A of the Act was passed on 28th December, 2007, i.e. shortly after the assessee was asked to furnish the aforesaid details. The Commissioner of Income Tax (Appeals) deleted the said additions after the assessee had filed relevant details, documents and confirmations. The assessee had stated that as a jeweller, it was normal and customary to pay ‘making charges’, in cash. The making charges were merely 2% of the sales and *per se*, very reasonable. It was stated that the makers, i.e. *karigars* were persons of meagre means and their addresses were not readily available and had to be ascertained. The assessment proceedings were being undertaken for seven years at the same time and voluminous details, figures and confirmations were asked for and had to be furnished. The Commissioner of Income Tax (Appeals), in view of the evidence and submissions, asked for a remand report from the Assessing Officer and thereafter observed that no specific defect could be pointed out. In the earlier years also, ‘making charges’ had been accepted. The addition made was *ad hoc* and assumptuous. The aforesaid finding has been affirmed by the Income Tax Appellate Tribunal (‘Tribunal’, for short).

6. Revenue submits that additional evidence should not have been taken on record. We do not agree that the said submission raises a

substantial question of law. The Commissioner of Income Tax (Appeals), after applying his mind and after perusal of the remand report, both before and after admitting the evidence, had decided the issue in favour of the respondent-assessee. The Assessing Officer in the remand report could not point out and controvert the documents and details provided. Genuineness of the documents was not doubted. The similar expenditure had been allowed in the earlier years also. The finding being factual, we do not find any reason to interfere with the order passed by the Tribunal. The submission that the Tribunal has not gone into specific details and, therefore, the impugned order requires interference, is without merit. The Revenue was appellant before the Tribunal and should have pointed out the defects in the reasoning given by the Commissioner of Income Tax (Appeals) with reference to specific documents and papers or the inquiries made by them. No such attempt, it is apparent, was made by the Revenue.

Additions under Section 68 of the Act and other additions

7. The second addition made by the Assessing Officer was under Section 68 of the Act on account of unexplained cash credits. It would be appropriate and proper to deal with the figures and the details involved separately for each assessment year. We shall also examine other additions made and subject matter of each appeal.

ITA No. 457/2014 - Assessment year 2000-01

8. The Assessing Officer made an addition of Rs.26,67,188/- under Section 68 of the Act. The Commissioner of Income Tax (Appeals) deleted the addition of Rs.24,84,868/-, received from M/s Sheenu Finance Company, while addition of Rs.1,82,320/- made on account of credit received from Rekha Goyal was upheld. The assessee, before the Commissioner of Income Tax (Appeals), had filed several details and pointed out that one Kewal Garg was proprietor of both M/s Sheenu Finance Company as well as M/s Gold Craft. They filed copy of the ledger of M/s Sheenu Finance Company for the relevant period. The additional evidence was accepted on record as it was submitted that the confirmations were asked by a questionnaire dated 6th December, 2000 and the assessment was made on 28th December, 2000. Bulky information, confirmation and evidences were required to be furnished at a short notice. Due to paucity of time and the fact that many cases were taken up simultaneously, relevant details and confirmations could not be furnished. The said additional evidences were then furnished to the Assessing Officer for his comments, who in the remand report, given by the Deputy

Commissioner of Income Tax, Central Circle-XXIII, stated that in view of the additional evidence furnished, credit/loan was genuine. Accordingly, the said addition was deleted.

ITA No. 456/2014 - Assessment Year 2001-02

9. Addition under Section 68 of the Act on account of unverified or unexplained cash credit of Rs.1,00,000/- was made on account of credit from Raju Bhutani. The Assessing Officer observed that there were unsecured loans of Rs.54,61,535/-, which were asked to be explained. Confirmations and details were filed to account for the said loans except for two unsecured loans of Rs.1,00,000/- each from Ashok Kumar Khanna and Raju Bhutani. Their addresses and Permanent Account Numbers (PAN) also were not furnished. Details with regard to Ashok Kumar Khanna, including the copy of his bank statement, the factum that the amount was returned on 31st March, 2003 by way of cheque, were noticed. In the subsequent remand report, the Assessing Officer observed that the loan from Ashok Kumar Khanna appeared to be genuine. Thus this addition was deleted. It is noticeable that in respect of cash credit of Rs.1,00,000/- from Raju Bhutani, the addition made by the Assessing Officer has not been deleted. The appeal filed by the Revenue on the assumption that the addition made in the case of Raju Bhutani is deleted, is factually wrong and incorrect.

ITA 459/2014 (Assessment Year 2002-03)

10. Addition of Rs.10,14,947/- was made under Section 68 of the Act on account of failure to substantiate and file confirmation of loans from Shyam Arora of Rs.3,00,000/-, Suman Girdhar of Rs.2,64,947/- and M/s Ashish Impex of Rs.4,50,000/-. For the reasons noted earlier, the Commissioner of Income Tax (Appeals) took on record the additional evidence after calling for remand report, in respect of credit from Shyam Arora, Suman Girdhar and M/s Ashish Impex. Shyam Arora had sent a copy of statement of accounts including his income tax return which was accepted by his Assessing Officer. Similarly, in case of Suman Girdhar, the loan was taken on interest and tax was deducted at source on the interest paid. Bank statement of Suman Girdhar establishing availability of funds, income tax return, etc., were filed. Confirmation of M/s Ashish Impex, PAN, bank statement and income tax returns were also filed. The Assessing Officer, in the remand report accepted that the aforesaid loans were genuine. In these circumstances, addition of Rs.10,14,947/- was deleted and the said order has been affirmed by the Tribunal.

ITA 455/2014 (Assessment Year 2003-04)

11. In this year, addition of Rs.10,00,000/- was made on account of unverified, undisclosed and unsecured loan from Renu Pruthi as this could

not be substantiated by producing confirmation, etc. before the Assessing Officer. However, the Commissioner of Income Tax (Appeals) accepted the application for taking on record the additional evidence after recording the reasons set out and noticed earlier. The respondent assessee had placed on record, copy of PAN card and confirmation from Renu Pruthi. She was an income tax assessee and acknowledgment of return was filed. In the second remand report, the Assessing Officer observed that the creditworthiness of Renu Pruthi had not been proved as she had returned income of Rs.1,74,535/- only. The Commissioner of Income Tax (Appeals), however, recorded that the assessee had made payments of Rs.1,07,400/- on 20th March, 2003 and Rs.38,821/- on 28th March, 2003. The Commissioner of Income Tax (Appeals) examined the copy of accounts and held that it has been established that Renu Pruthi had sufficient opening balance of Rs.10,38,921/- and no fresh amount was received during the year. The Assessing Officer in the remand report had not commented on the said aspect. The Commissioner of Income Tax (Appeals) recorded that the loan had not been received in the year under assessment and deleted the said addition of Rs.10,00,000/-. Aggrieved, Revenue had preferred an appeal before the Tribunal, but apparently no evidence was put on record by the Revenue to contend that the loans were

raised in the assessment year. Hence, we see no reason to interfere or say anything on this aspect.

12. Another ground raised relates to addition of Rs.7,00,000/- on account of unexplained capital credited in the account of Mukta Chaudhary, a partner of the assessee firm. The Assessing Officer held that the genuineness of the transaction, creditworthiness of Mukta Chaudhary to make the said contribution to the capital account was not established. He observed that the father of Mukta Chaudhary, i.e. R.C. Dandona had made a gift of Rs.25,00,000/- and she had received another gift of Rs.40,000/- from her uncle H.C. Dandona., but the total amount of credit to her capital account was Rs.32,40,000/-, and, therefore addition of Rs.7,00,000/- was made. The Commissioner of Income Tax (Appeals) has deleted addition of Rs.5,00,000/-, and not the entire addition of Rs.7,00,000/- as has been wrongly stated in the grounds of appeal filed before us. Several contentions were raised before the Commissioner of Income Tax (Appeals) including the legal submission that the addition should not be made in the hands of the assessee firm but in the hands of the individual partner. Mukta Chaudhary had enclosed and filed evidence/material in the form of bank statement, acknowledgment of income tax return in which she had declared and accounted for the investment in the capital account of the assessee firm. She had received another gift of Rs.5,00,000/- from her father and

evidence in that regard was enclosed. In the second remand report, the Assessing Officer accepted that, Mukta Chaudhary had made payments towards capital account by way of two cheques of Rs.2,00,000/- and Rs.5,00,000/-, and she had established that Rs.5,00,000/- was gifted to her by her father but in respect of Rs.2,00,000/- confirmation and details were not filed and the said amount remained unexplained. Accordingly, the Commissioner of Income Tax (Appeals) deleted addition of Rs.5,00,000/-, and confirmed addition of Rs.2,00,000/-. The said decision has been affirmed by the Tribunal.

ITA No. 460/2014 (Assessment Year 2004-05)

13. Assessing Officer made an addition of Rs.2,62,292/- as representing unexplained and unsecured credit of Rs.1,07,200/- given by Anita Saini and Rs.1,55,092/- given by Naresh Girdhar for failure to file confirmation, bank account statement, etc. The assessee had submitted that Rs.40,000/- was received from Naresh Girdhar during the year and Rs.1,10,000/- was the opening balance, and he had filed confirmation of Naresh Girdhar, his bank statement, acknowledgment of income tax return to substantiate the same. Respondent assessee also claimed that the Assessing Officer had issued summons to Naresh Girdhar who had appeared and confirmed the loan. The Commissioner of Income Tax (Appeals) observed that this was

factually correct and addition in relation to Naresh Girdhar was deleted, but addition in case of unsecured loan given by Anita Saini of Rs.1,07,200/- has been affirmed. We notice that it has been wrongly stated in the ground of appeals that addition of Rs.1,07,200/- also stands deleted.

14. Another addition of Rs.5,26,446/- was made by the Assessing Officer on account of discrepancy in the total weight of jewellery purchased as shown in the party wise list, viz. the jewellery weight as mentioned in Form 3CD. The Assessing Officer held that there was a difference of 957.173 gms. Before the Commissioner of Income Tax (Appeals), it was explained that the total weight of jewellery purchased was 81,423.292 gms, whereas as per the tax audit report the jewellery purchased was shown as 80,466.118 gms. The jewellery purchased was old gold which was converted into ornaments and, therefore, there was weight loss. The purchase details given related to old gold, whereas in the books of account net weight of the ornaments was shown. It was further stated that there was no evidence to show sale of jewellery outside the books. Without prejudice and in the alternative, it was submitted that the respondent assessee had surrendered Rs.2,50,00,000/- and as corollary, addition on account of undisclosed sale should not be made. The Commissioner of Income Tax (Appeals) observed that the Assessing Officer in the remand report had not made any adverse comments on the

arguments put forth and, therefore, he accepted the statement of the assessee and hence addition of Rs.5,26,446/- was deleted. The Commissioner of Income Tax (Appeals) has also observed that this addition has to be considered along with surrender of Rs.2,50,00,000/- made in the subsequent year on account of excess gold found during the search. The aforesaid finding has been affirmed by the Tribunal. Looking at the amount involved and the remand report which was submitted, we are not inclined to interfere with the finding recorded by the Tribunal. It is factual. However, we record that this would not affect and should not be construed as a positive finding by the High Court on question of telescoping surrender of Rs.2,50,00,000/- and the impact or effect thereof. We have issued notice in *ITA No. 461/2014* relating to the Assessment Year 2005-06 and this order will not be considered as final and binding on the said question.

ITA No. 458/2014 (Assessment Year 2006-07)

15. As noticed above, the assessee for this year had filed income tax return of Rs.2,26,15,330/- in response to notice under Section 153A.

16. The Assessing Officer made an addition of Rs.32,34,250/- under Section 68 of the Act as confirmations, bank accounts statements, income tax returns of the persons who had given unsecured loans were not brought

on record. The Assessing Officer noticed that as per the balance sheet, the respondent assessee had shown unsecured loans and was asked to furnish confirmation, copy of bank statement and returns of the said creditors. Some details were furnished but copy of income tax returns and bank statements in respect of Ruma Bhutani (Rs.2,00,000/-), Karuna Nagpal (Rs.5,00,000/-) and Sneh Arora (Rs.15,00,000/-) was not made available to verify their creditworthiness. Besides, confirmations were not furnished from Komal Gaba (Rs.2,00,000/-), Kapil Gaba (Rs.1,00,000/-), Rajinder Gaba (Rs.1,00,000/-), Rajinder Kr. Gaba (HUF) (Rs.4,09,212/-) and Anita Saini (Rs.2,25,038/-). Accordingly, addition of Rs. 32,34,250/- was made. The Assessing Officer noticed that interest had been paid to Ruma Bhutani, Karuna Nagpal and Sneh Arora but the said expenditure was disallowed. In the present appeal, disallowance of interest has not been made subject matter of challenge.

17. The Commissioner of Income Tax (Appeals), for the reasons stated earlier, admitted additional evidence on record after calling for remand report. It was pointed out that on the interest paid, tax was deducted at source and the copies of the bank statements etc. were brought on record. The confirmation of Ruma Bhutani, Karuna Nagpal, Komal Gaba, Kapil Gaba, Rajinder Gaba and Rajinder Kumar Gaba (HUF) had been filed. The Assessing Officer, after examining and verifying the documents, observed

that the claim appeared to be genuine. The Commissioner of Income Tax (Appeals) in view of the statement made in the remand report by the Assessing Officer accepted the genuineness of the credit to the extent of Rs.15,09,212/-.

18. In the case of Sneh Arora, copy of her return and statement of income in the assessment year 2006-07 were placed on record and it was noticed that she had been paid Rs.1,77,041/- but she had not shown any interest in her return for the assessment year 2006-07. The Assessing Officer in the remand report had observed that Rs.15,00,000/- may be undisclosed income of the assessee. It was noticed that during the year in consideration, only Rs.1,00,000/- had been received from Anita Saini. It was also observed that confirmation of Anita Saini had not been brought on record. The Commissioner of Income Tax (Appeals) deleted the addition in the case of Sneh Arora after noticing the facts observing that confirmation had been filed, bank statement and copy of her income tax return had also been filed. She had accepted the factum that she had given the loan. However, the Commissioner of Income Tax (Appeals), had confirmed addition of Rs.1,00,000/-, as no confirmation had been filed in the case of Anita Saini. The balance amount represented the opening balance of the earlier year. Thus, in all addition of Rs.1,17,838/- was confirmed and the balance addition of Rs.31,16,412/- was deleted.

19. The Commissioner of Income Tax (Appeals) observed that the Assessing Officer in the remand report had not given any adverse comments on the evidence produced. Non-declaration or failure of Sneh Arora to show that interest would not prove that the loan was not genuine. In the absence of any other reason mentioned by the Assessing Officer, the addition was deleted. It is noteworthy that Sneh Arora had been identified and had duly confirmed having given the loan. We notice that a part payment had also been made to her.

20. In the grounds of appeal raised by the Revenue in the Assessment Year 2006-07, another issue raised relates to the bills for exhibition expenses of Rs.1,23,225/-. It is stated that the bills by themselves would not establish that the expenses were incurred wholly and exclusively for business. Confirmation from Sercon India Pvt. Ltd. for payment of Rs. 1,23,225/- for participating in the Delhi Gold Festival exhibition was filed. However, no evidence had been furnished in respect of balance amount of Rs.10,933/-, and, therefore, the said disallowance should be upheld.

21. The contention of the Revenue is that the aforesaid addition has not been examined and dealt with by the Tribunal in the impugned order. We do not know whether this aspect was argued before the Tribunal or not, especially in view of the remand report of the Assessing Officer in which he had accepted that the exhibition expenditure to the extent of Rs.1,23,225/-

stands proved and established. Nevertheless, in case Revenue is of the opinion that this matter was argued and has not been adjudicated, it is open to them to file an application under Section 254(2) before the Tribunal. If any application is filed, the same will be considered and decided in accordance with law.

22. It is apparent from the aforesaid discussion that the issues raised in the present appeals are factual and this Court while exercising appellate jurisdiction under Section 260A of the Act is not an appellate Court for facts reprise. Factual findings can be challenged only on the ground that the factual findings recorded are perverse or relevant evidence has not been considered or irrelevant material has been relied. In such cases, pleadings in this regard have to be specific, erudite and the should indicate clearly the error or mistake. This Court in *CIT versus Sunaero Limited* [2012] 345 ITR 163, at page 187, regarding perversity of a decision of the Tribunal, has observed:-

“ A factual decision is perverse if the authority has acted without any evidence or on view of facts, which cannot be reasonably entertained. A perverse finding is one, if it is arrived at without any material or if it is arrived at or inference is made on material, which would not have been accepted or relied upon by a reasonable person conversant with the law. If the finding is based upon surmises, conjectures or suspicion and is not rationally possible. A factual conclusion is regarded as perverse when no person duly instructed or acting judicially could act upon the record before him, have reached the conclusion arrived at by the tribunal/authority”

23. In the present case the Assessing Officer in the second remand report on several accounts/additions accepted that the additional evidence placed on record was sufficient to show that the transactions were genuine and addition could not be sustained. In spite of second remand report, Revenue has preferred appeals on even issues or amounts, which were accepted as genuine. In respect of other amounts/transactions, not accepted by the Assessing Officer in the remand report, we have referred to the findings recorded by Commissioner of Income Tax (Appeals) in favour of the respondent-assessee and observed why and for what reason we do not think the said findings can be treated as perverse or based upon no material or evidence. Further, Revenue was aggrieved by the order passed by the Commissioner of Income Tax (Appeals) and was the appellant before the Tribunal. They should have highlighted and pointed out the factual inaccuracies and the incorrect findings recorded by the first appellate authority. Even before us, except for the remand reports, which have been filed in some appeals, no other details and particulars have been filed to challenge the factual findings recorded as perverse.

24. Given the facts of the present case, we are of the opinion that the decision of the Commissioner of Income Tax (Appeals), upheld by the Tribunal, cannot be termed as being perverse and accordingly we find no reason to interfere with the same.

25. The appeals are accordingly dismissed, but with the observations as made in paragraph 21 above.

(SANJIV KHANNA)
JUDGE

(RAJIV SAHAI ENDLAW)
JUDGE

SEPTEMBER 26th, 2014
NA