

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

**(THROUGH VIRTUAL COURT),**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI. RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.40/ALLD/2020**

**Assessment Year: 2015-16**

ACIT, Circle-1, Allahabad, U.P.	v.	Amit Kumar Gupta, 137/107, Meerganj, Chowk, Allahabad, U.P. <b>PAN-AGPPG6256M</b>
		(Respondent)

**ITA No.83/ALLD/2020**

**Assessment Year: 2015-16**

Amit Kumar Gupta, 137/107, Meerganj, Chowk, Allahabad, U.P. <b>PAN-AGPPG6256M</b>	v.	Dy. Commissioner of Income Tax, Circle-I, Allahabad, U.P.
		(Respondent)

**C.O. No. 07/ALLD/2020**

**In**

**ITA No. 40/ALLD/2020**

Amit Kumar Gupta, 137/107, Meerganj, Chowk, Allahabad, U.P. <b>PAN-AGPPG6256M</b>	v.	ACIT, Circle-1, Allahabad, U.P.
		(Respondent)

Appellant by:	Ms. Nidhi Verma Singh, CIT DR
Respondent by:	None
Date of hearing:	03.08.2021
Date of pronouncement:	01.09.2021

**ORDER**

**PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:**

These cross appeals and cross objection by the assessee are directed against the order dated 30.12.2019 of CIT(A) for the assessment year 2015-16. None has appeared on behalf of the assessee when these appeals and cross objection were called

for hearing. It transpires from record that right from the beginning, nobody is appearing on behalf of the assessee though on some occasions, the assessee has filed the application for adjournment of the hearing. Repeated notices were issued to the assessee through all modes including the email sent to the assessee at the email ID given by the assessee in the Form No. 36 but the assessee has not responded to the notices issued by the Tribunal. Accordingly, we propose to hear and dispose of these cross appeals and cross objection *ex parte*. The Department and assessee has raised the following grounds in their cross appeals:-

**Department**

1. *The Ld. CIT (A) has failed to appreciate the fact that the assessee himself has failed to produce any genuine documents related to claim of purchase through four fills of M/s. Pushpa enterprises during the survey proceedings.*
2. *The Ld. CIT (A) has failed to appreciate the fact that during the survey proceedings, it was found that the assessee had not recorded these purchase related to M/s. Pushpa enterprises amounting to Rs. 3,94,50,90/- in his books of accounts and also failed to furnish any explanation in this respect.*
3. *The Ld. CIT (A) has failed to appreciate the fact that the assessee himself has admitted in statement taken on oath recorded u/s 131 of I.T. Act, 1961 that he is unable to explain the source of the excess stock found during the survey proceedings.*
4. *The Ld. CIT (A) has failed to appreciate the fact that the assessee himself admitted in his statement recorded u/s 131 of the I.T. Act, 1961 that he will pay the taxes in undisclosed stock found during survey and given postdated cheque itself.*
5. *The Ld. CIT (A) has deleted the addition of Rs. 3,94,50,903/- without calling any remand report or giving the opportunity to the A.O. during appeal proceedings.*
6. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 3,94,50,903/- made by the A.O. on the grounds that purchase made from M/s. Pushpa Enterprises are an afterthought of the assessee to manage the undisclosed stock found during the survey proceedings.*
7. *The Ld. CIT (A) has erred in law and on facts that the assessee himself has shown undisclosed income to the tune of Rs. 1,77,00,000/- as other income, therefore, his contention that his books are reliable is not correct.*
8. *The Ld. CIT(A) has erred in law and on fact in deleting the addition of Rs. 21,77,576/- which is based on valuation by Government approval Valuer without giving any opportunity to valuer as well as the A.O.*

9. *The Ld. CIT (A) has ignored the valuation of Govt. approved Valuer without mentioning any reason and has given relief against the admitted facts.*
10. *The Ld. CIT (A) has failed to appreciate the fact that the assessee himself accepted the fact that he is unable to explain the source of excess stock and never questioned its valuation during the survey but only after assessment proceedings.*
11. *Right is reserve to alter, modify and to file any fresh ground of appeal.*

### **Assessee**

1. *That the assessment order Dt. 30.12.2017 passed by u/s 143(3) of the IT Act by the assessing officer by determining an abnormal income of Rs. 7,44,34,480/- as against the returned income of Rs. 1,87,10,240/- in arbitrary manner ignoring the correct facts and norms and his action as partly confirmed by the Commissioner of Income Tax (Appeal) is bad both on the fact and in law.*
2. *That in any of the matter from the assessment order it will appear that the proviso of section 145(3) of the IT Act was not invoked in the light of fact that the books of account was maintained by the appellant and are complete in all respect hence the entire basis of the addition is not correct in the light of various judicious pronouncement.*
3. *The Ld. Commissioner of Income Tax (Appeal) has erred in the maintaining a part of sum of Rs. 1,40,42,470/- out of the addition of Rs. 1,62,73,339/- made by the assessing officer alleging unexplained gold and silver ornament ignoring the correct purity which is highly unjustified, illegal and against the law hence same is liable to be deleted in the facts and circumstances of the case.*
4. *The commission of Income Tax (Appeal) has erred in upholding a part of addition of Rs. 1,40,42,470/- made on account of alleged unexplained jewellery without considering the submission/plea of the appellant and without any supportive materials brought on record which is incorrect, unfair and against law, hence the addition so made and maintained is liable to be deleted in the facts and circumstances of the case.*
5. *That in any view of the matter certain gold and silver items were received by the appellant on his family partition which is not the amount of undisclosed stock of gold and silver items but the same were also considered by the assessing officer on the basis of valuation report on the date of the survey which is unjustified and illegal the same is not liable to be taxed in the light of observation of the CIT(A) in last para of his order.*
6. *That the lower authorities failed to adopt correct purity of the gold and silver jewellery found at the time survey and taxed the assessee in arbitrary manner*

*ignoring the correct facts and purity report furnished by the assessee, which is wrong, illegal and injustice with the assessee.*

*7. That in the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.*

*8. That the appellant reserves his right to take any fresh ground before hearing of the appeal."*

2. The assessee is an individual and is in the business of trading of Gold and Silver Jewellery. There was a survey under section 133A of the Income Tax Act on 20.02.2015 at the business premises of the assessee bearing no. 137/107, Meerganj, Allahabad. During the survey proceedings one Sri. Deepak Kumar Gupta, the brother of the assessee were present at the business premises and his statement was recorded. As per the physical verification of the stock at the time of survey, undisclosed stock of Gold and Silver was found which was admitted by Sri Deepak Kumar Gupta. Thereafter, the Assessing Officer also recorded the statement of the assessee under section 131 of the Income Tax Act during post survey enquiry wherein the assessee has explained the excess stock in part by producing certain purchase bills issued by M/s Pushpa Enterprises, Agra. The assessee while filing the return of income under section 139(1) on 30.09.2015 has declared the total income of Rs.1,87,10,240/- which includes undisclosed stock of Rs.1,70,82,009/-. The Assessing Officer completed scrutiny assessment on 30.12.2017 whereby the total income of the assessee was determined at Rs. 7,44,34,480/- as against the return income of Rs. 1,87,10,240/-. The assessee challenged the action of the Assessing Officer before the CIT(A) and explained that the brother of the assessee was not aware of the complete facts of the stock as well as other transactions of purchase and sale of the jewellery which were considered by the Department at the time of survey. The assessee also explained that the assessee produced four invoices of purchase of Gold from M/s Pushpa Enterprises, Agra which were rejected by the Assessing Officer. Apart from these four invoices total amounting to Rs. 3,94,50,903/- the assessee also explained that he received Gold of 3478 Kg 520

Gms and Silver of 38 Kg 790 Gms on family partition. The CIT(A) has granted part relief to the assessee by the deleting the addition made by the Assessing Officer of Rs. 3,94,50,903/- as well as directed the Assessing Officer to consider the facts as explained by the assessee while giving the effect to the appellate order and take necessary action as per law. Thus, the CIT(A) has granted substantial relief to the extent of addition made by the Assessing Officer on account of undisclosed stock which was explained by the assessee by producing four bills of M/s Pushpa Enterprises, Agra. Therefore, both the assessee as well as department have filed these cross appeals challenging the order of the CIT(A).

3. Before us the learned DR has submitted that the CIT(A) considered the additional evidence of Wealth Tax Return as well as other documents in the appellate proceedings without giving an opportunity of hearing to the Assessing Officer therefore, there is a violation of principles of natural justice in terms of Rule 46A of the Income Tax Rules. In this respect, the learned CIT DR has referred to ground no. 6 of Revenue's appeal and contended that Revenue has raised a specific ground on this issue that an addition of Rs. 3,94,50,903/- was deleted by the CIT(A) without calling remand report or giving opportunity to the Assessing Officer. The CIT(DR) pleaded that the impugned order of the CIT(A) to the extent of deleting the addition may be set aside and the order of the Assessing Officer may be restored. As regards, the other additions since the assessee has failed to produce any supporting evidence and explanation to contradict the value of the undisclosed stock the same is liable to be sustained. She has relied upon the orders of the Assessing Officer.

4. We have considered the submissions of the learned DR as well as relevant material on record. During the survey under section 133A of the Act carried out on 20.02.2015 at the business premises of M/s Swarn Ganga Jewellers, 137, Meerganj, Allahabad undisclosed stock of Gold and Silver Jewellery was found. The Gold Jewellery of 28 Kg 7.57 gm and Silver Jewellery of 38Kg 874 Gms was found in excess

of the books of accounts. These quantity of undisclosed stock was accepted by one Sh. Deepak Gupta, the brother of the assessee in his statement recorded during the survey. Thereafter the assessee in his statement recorded under section 131 of the Income Tax Act during the post survey enquiry accepted this quantity of Gold and Silver Jewellery found during the survey but he has explained the Gold Jewellery to the tune of 18 Kg 45 gms amounting to Rs. 3,94,50,903/- being purchased by the assessee vide four bills dated 19.02.2015 of M/s Pushpa Enterprises, Agra. Therefore, the assessee claimed that out of the total undisclosed stock of Gold Jewellery of 27 kg 757 gms 18 kg 45 gms is the purchases made by the assessee vide these invoices which were not considered by the department at the time of survey. The assessee though accepted the remaining undisclosed Jewellery of Gold to the tune of 10 Kg 517 Gms but he has explained the valuation of the same should be considered after adjusting the impurity in the Jewellery. Similarly, the assessee also accepted the Silver Jewellery of 139 Kg 724 Gms as undisclosed but the valuation of the same was also claimed to be done after adjustment of the impurity in the Jewellery. The statement of the assessee under section 131 was recorded on 24.02.2015. Thereafter, the assessee filed a return of income wherein the assessee declared income to the extent of Rs. 1,70,82,009/- on account of undisclosed stock by reducing the value of the undisclosed Gold Jewellery of 18 Kg 45 Gms amounting to Rs. 3,94,50,903/- in view of the four invoices issued by the M/s Pushpa Enterprises, Agra. The Assessing Officer in the assessment proceedings has rejected the explanation of the assessee of purchases made vide alleged four invoices of Pushpa Enterprises, Agra and consequently made an addition of Rs. 3,94,50,903/-. Apart from this, the Assessing Officer also made addition in respect of the remaining Gold and Silver Jewellery at a differential amount of Rs. 1,62,73,339/- as the assessee has disclosed the income on account of undisclosed stock only at Rs. 1,70,80,009/-.

5. The CIT(A) while deleting the addition of Rs. 3,94,50,903/- has accepted the explanation of the assessee based on these four bills issued by M/s Pushpa

Enterprises, Agra and also held that there is no incriminating material found during the course of survey. The relevant part of the finding of the CIT(A) at page 25 of the impugned order is as under:-

*"I have perused the order of the A.O. facts of the case and arguments given by appellant. Appellant is an individual engaged in business of purchase and sale of silver and gold ornaments in the name of style of M/s Swarn Ganga jewellers for last number of year. He is maintaining regular books of accounts, which are duly audited for last number of years. It is a fact that no incriminating material was found during the course of survey. Initial statement of appellant was not recorded by the survey party as the appellant was not there. Valuation report prepared by the approved valuer M/s. Pankaj Jewel Art, creation of found silver and gold items, was objected by the appellant, about the value of purity being used for valuing all the items found. These protests and objections made by the appellant's brother were ignored by the AO and the valuer. No signatures of the appellant could be obtained on such valuation report and as submitted no copy of the valuation report was provided to the appellant by the surveying party."*

6. In our view, this finding of the CIT(A) is contrary to the facts as detected during the course of survey. It is pertinent to note that when the excess stock of Gold and Silver Jewellery was found during the course of survey proceedings which was acknowledged and accepted by the assessee in the statement recorded under section 133a of the Act as well as under section 131 of the Income Tax Act in the post survey proceedings then the undisputed quantity of undisclosed stock coupled with the statements of the assessee would constitute a tangible material which will be regarded as incriminating material for the purpose of assessment based on the facts and excess stock found during the survey. The quantity of stock found during the survey was never disputed by the assessee though the assessee claimed a part of it as not undisclosed. Hence when the assessee has not quantity of the stock found during the survey then the said quantity of the stock itself would constitute incriminating material as it was not recorded in the books of accounts of the assessee. The subsequent bills / invoices produced by the assessee without making the payment of purchases to the extent of Rs. 3,94,50,903/- is always a subject matter of verification

and enquiry. Therefore, this finding of the CIT(A) is not sustainable and the same is set aside. Similarly, the CIT(A) while passing the order decided the issue of the remaining Jewellery after reducing the amount of 18Kg.45 Gms Gold allegedly purchased from M/s Pushpa Enterprises, Agra. The CIT(A) has not given a conclusive finding but the issue is set aside to the record of the Assessing Officer and that too with a direction to consider the various facts which were explained by the assessee during the appellate proceedings. The CIT(A) has passed the impugned order by accepting the evidences as well as the explanation of the assessee without calling a remand report from AO. The relevant part of the finding of the CIT(A) on this second issue is as under:-

*"It is seen from the assessment order that AO has given the credit to the appellant of the stock disclosed in his capital account of gold jewellery at Rs.1,50,23,344/- and of Silver jewellery at Rs. 20,58,665/- aggregating to Rs. 1,70,82,009/- and added the difference amount of Rs. 1,62,73,339/- (3,33,55,348-1,70,82,009) on account of undisclosed stock u/s 69 of the I.T. Act, 1961. Appellant has brought on records a plea in his submission that Gold of 3478 kg 520 gms and silver 38 kg 790 gm was received by him on family partition that was left out while making the statement. Same is being ignored as not related to these grounds of appeal. It seems that this gold of 3478 kg 520 gms and silver of 38 kg 790 gms was received by him on family partition and is not the amount of undisclosed stock of gold jewellery weighing 10.517 kgs and silver ornaments weighing 139.724 kgs worked out on the basis of the valuation report of the registered valuer totaling to Rs, 3,33,55,348/- on the date of survey. AO is directed to consider these facts while giving effect to this appellate order and take any action as per law, if needed."*

7. While giving the direction to Assessing Officer to verify and decide the issue as per law amounts to remand the matter to the record of the Assessing Officer which is beyond the jurisdiction of the CIT(A) as per the provisions of section 250 of the Income Tax Act. Accordingly, the impugned order of the CIT(A) is not sustainable and the same is liable to be set aside.

8. Hence, in the facts and circumstances of the case, when the CIT(A) has passed the impugned order without calling a remand report from the Assessing Officer and even giving a finding that there is no incriminating material found during the course of survey which is contrary to the undisputed facts and material on record is not sustainable in law and liable to be set aside. We order accordingly. The Assessing Officer is directed to re-adjudicate these issues after proper verification and examination of record and particularly the genuineness of the transaction of the alleged purchases made by the assessee from M/s Pushpa Enterprises, Agra by considering the status of payment of the said amount by the assessee. Needless to say the assessee be given an appropriate opportunity of hearing before passing the fresh order.

9. In the cross objection, the assessee has not raised any new issue but the grounds raised in the cross objections are merely in support of the order of CIT(A). In view of our finding on the cross appeals, the cross objection filed by the assessee becomes infructuous and the same is dismissed.

10. In the result, the cross appeals are allowed for statistical purpose and cross objection filed by the assessee is dismissed.

Order pronounced in the open Court on 01.09.2021 through video conferencing at Allahabad.

**Sd/-**  
**[RAMIT KOCHAR]**  
**ACCOUNTANT MEMBER**  
Dated: 01/09/2021  
Allahabad  
sh

**Sd/-**  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A), Allahabad
4. CIT
5. DR -

By order  
Assistant Registrar