

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 4084/Mum/2013

(निर्धारण वर्ष / Assessment Year 2005-06)

आयकर अपील सं./I.T.A. No. 5448/Mum/2013

(निर्धारण वर्ष / Assessment Year 2007-08)

Late Smt. Abida Mohammed Rakhangi Through Legal Heirs Mukhtar Rakhangi , Azim Rakhangi & Salim Rakhangi Rakhangi Gas Services, 22, Muslim Cemetry, S B Marg, Near Rakhangi Chowl, Lower Parel, Mumbai 400013	बनाम/ v.	ITO-18(2)(4), 109, 1 st Floor, Piramal Chambers, Lalbaug, Parel, Mumbai 400012.
स्थायी लेखा सं./PAN :AABPR1071K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri Dharan Gandhi
Revenue by :		Shri Rajesh Kumar Yadav

सुनवाई की तारीख /Date of Hearing : 18.09.2017

घोषणा की तारीख /Date of Pronouncement : 29.09.2017

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

These two appeal, filed by the assessee, being ITA No. 4048/Mum/2013 & ITA No. 5448/Mum/2013 for assessment years 2005-06 and 2007-08 respectively are directed against the appellate order dated 23.04.2013 & 03.06.2013 respectively passed by learned Commissioner of Income Tax (Appeals)-29, Mumbai (hereinafter called "the CIT(A)"), appellate proceedings had arisen before learned CIT(A) from the assessment orders both dated 22-12-2011 passed by learned Assessing Officer (hereinafter

called "the AO") u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal in I.T.A. No. 4084/Mum/2013 raised by the Assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"1. Under the facts and circumstances of your appellant, the Learned CIT(A) has erred in upholding the addition of Rs. 12,50,000 made by the assessing officer by treating the investment made in Fixed Deposits as unexplained investment u/s.69 of the Income-Tax, Act, 1961.

2. The Learned CIT(A) failed to appreciate the fact that your appellant has made investment in Fixed deposits from sale of gold ornaments.

3. The Learned CIT(A) has erred in stating that your appellant has not filed any evidence to substantiate that she was in the possession of gold jewellery as on 31.03.2004 which was subsequently sold by the appellant.

3.01 The Learned CIT(A) failed to appreciate the letter filed with A.O vide letter dated 10th October,2012 in which valuation report of jewellery as on 31/03/2002 vide valuer's report dated 16/04/2002.

4. The Learned CIT(A) failed to appreciate the confirmations obtained from the buyers with respect to the sale of gold ornaments.

5. The Learned CIT(A) failed to appreciate the fact that buyers have utilized their agricultural income to fund their purchase. The details with respect to their ownership of the agriculture land had been provided along with confirmations.

6. The Learned CIT(A) failed to appreciate the fact that your appellant has suo-moto offered long term capital gain/loss on sale of jewellery for the assessment year under consideration during the course of appellate proceedings.

7. The Learned CIT(A) has erred in holding that appellant has not given any proof to substantiate that your appellant was in the possession of gold jewellery and there were also no corroborating evidence to prove that this gold jewellery was sold by her to her relatives in cash.

8. The Learned CIT(A) has failed to appreciate the remand report submitted by A.O which was submitted by A.O after considering all the evidences produce by your appellant.

9. The Learned CIT(A) has erred in holding that appellant has produced only two persons who have claimed to have purchased the

jewellery from the appellant b their claims are not supported by any evidence.

9.01 The Learned CIT(A) has erred in holding that appellant has not filed any evidence in respect of another two persons.

9.02 The Learned CIT(A) has failed to appreciate the remand report in which it is clearly stated that in respect of another two persons documentary evidences were produced and furnished.

10. The CIT(A) has erred in holding that appellant has not been able to explain the source of investment of Rs 12,50,000/- made in the FDs in Kokan Mercantile Bank.

11. Under the facts and circumstances of your appellant, Learned CIT(A) has erred confirming the levy of interest u/s 234A and 234B of the Income Tax Act, 1961.

12. Your appellant craves leave to add, alter or delete any of the above grounds of appeal”.

3. The grounds of appeal in I.T.A. No. 5448/Mum/2013 raised by the Assessee in the memo of appeal filed with the tribunal read as under:-

“ 1. Under the facts and circumstances of your appellant, the Learned CIT(A) has erred in upholding the addition of Rs. 30,00,000 made by the assessing officer by treating the investment made in Fixed Deposits as unexplained investment u/s.69 of the Income-Tax, Act, 1961.

2. The Learned CIT(A) failed to appreciate the fact that your appellant has made investment in Fixed deposits from sale of gold ornaments and silver.

3. The Learned CIT(A) has erred in stating that your appellant has not filed any evidence to substantiate that she was in the possession of gold jewellery as on 31.03.2002 which was subsequently sold by the appellant.

3.01 The Learned CIT(A) failed to appreciate the letter filed with A.O vide letter dated 10th October, 2012 in which valuation report of jewellery as on 31/03/2002 vide valuer's report dated 16/04/2002.

4. *The Learned CIT (A) failed to appreciate the confirmations obtained from the buyers with respect to the sale of gold ornaments.*

5. *The Learned CIT(A) failed to appreciate the fact that buyers have utilized their agricultural income by Sale of Mangoes to fund their purchase. The details with respect to their ownership of the agriculture land had been provided along with confirmations.*

6. *The Learned CIT(A) failed to appreciate the fact that your appellant has suo-moto offered long term capital gain/loss on sale of jewellery for the assessment year under consideration during the course of appellate proceedings.*

7. *The Learned CIT(A) has erred in holding that appellant has not given any proof to substantiate that your appellant was in the possession of gold jewellery and there were also no corroborating evidence to prove that this gold jewellery was sold by her to her relatives in cash.*

8. *The Learned CIT(A) has erred in holding that appellant has not given any proof to substantiate that your appellant has received gift of Rs 300,000/- from Mr Abdul Rakhangi.*

8.01 *The Learned CIT(A) failed to appreciate the remand report in which it is clearly stated vide point 5 of remand report of A.O that Mr Abdul Rakhangi has confirmed vide letter dated 16/08/2012 that he has gifted in cash Rs 300,000/- on 26.07.2006 and the same was given out of his agriculture income and past savings.*

9. *The Learned CIT (A) has failed to appreciate the remand report submitted by A.O which was submitted by A.O after considering all the evidences produce by your appellant.*

10. *The Learned CIT (A) has erred, in holding that appellant has produced only two persons who have claimed to have purchased the*

jewellery from the appellant but their claims are not supported by any evidence.

10.01 The Learned CIT (A) has erred in holding that appellant has not filed any evidence in respect of another three persons.

10.02 The Learned CIT (A) has failed to appreciate the remand report in which it is clearly stated that in respect of another two persons documentary evidences were produced and furnished.

11. The CIT(A) has erred in holding that appellant has not been able to explain the source of investment of Rs 30,00,000/- made in the FDs in Kokan Mercantile Bank and Bombay Mercantile Bank.

12. Under the facts and-circumstances of your appellant, Learned CIT (A) has erred in confirming the levy of interest U/S 234A and 234B of the Income Tax Act, 1961.

13. Your appellant craves leave to add, alter or delete any of the above grounds of appeal.”

4. First we shall take up appeal for assessment year 2005-06 in ITA no. 4084/Mum/2013. The assessee filed return of income for assessment year 2005-06 on 29.10.2005 declaring total income of Rs. 46,096/- which was processed by Revenue u/s. 143(1) of the Act. In the case of the assessee , the assessment for assessment year 2008-09 was completed u/s 143(3) on 27.12.2010, wherein during the course of assessment proceedings it was observed by the AO that assessee has made certain deposits with Kokan Mercantile Bank and Bombay Mercantile Bank on various dates and years and their maturity amount along with interest accrued there on was credited in Kokan Mercantile Bank saving bank account which were not declared in the return of income filed with revenue and same was not offered for taxation. The AO made additions to the income of the assessee on account of interest on matured FD/RD's for assessment year 2008-09 . It was observed by the AO that the assessee did not disclosed all the material facts in the return of income regarding the source of FDs , hence, the case for

assessment year 2005-06 were reopened by the AO u/s 147 which culminated in the issue of notice u/s. 148 dated 18.03.2011 which was served on assessee on 23-03-2011. The assessee was asked to explain the sources of making deposits in the bank to the tune of Rs.12.50 lacs which was made in Kokan Mercantile Bank and was not declared in the Balance Sheet filed by the assessee . The assessee did not declared the sources of making such investments by way of deposit in Kokan Mercantile Bank . The assessee did not give any explanation as to why this bank account was not declared to Revenue nor any details/explanations were furnished by the assessee , which led to addition to the tune of 12,50,000/- w.r.t. deposits made with Kokan Mercantile Bank as unexplained investment u/s. 69 of the Act, vide assessment order dated 22-12-2011 passed by the AO u/s 143(3) r.w.s. 147. The details of said deposits are as under:-

Date of Deposits/bank	Date of deposit	Dep. Amount	Maturity amount	Interest which was not incorporated
Kokan Mecantile Bank	01.01.2005	2,50,000	2,58,058	58,058
Kokan Mecantile Bank	03.05.2004	2,00,000	2,42,652	42,652
Kokan Mecantile Bank	03.05.2004	2,00,000	2,42,652	42,652
Kokan Mecantile Bank	03.05.2004	2,00,000	2,42,652	42,652
Kokan Mecantile Bank	03.05.2004	2,00,000	2,42,652	42,652
Kokan Mecantile Bank	03.05.2004	2,00,000	2,42,652	42,652
Kokan Mecantile Bank	03.05.2004	2,00,000	2,42,652	42,652
Total		12,50,000		271318

5. The assessee filed first appeal with learned CIT(A) against assessment order dated 22-12-2011 passed by the AO u/s 143(3) r.w.s. 147. The assessee made a claim before learned CIT(A) that the assessee being a senior citizen of 80-year-old because of her illness was not able to furnish the details called for by the AO . The assessee filed additional evidences before learned CIT(A) in order to explain the sources from which investments were made in the FD and the request was made to admit the additional evidences and it was claimed that the assessee is very senior citizen of 80 years of age which is in itself a reasonable cause for not filing of evidences before the AO.

The learned CIT(A) admitted the additional evidences and the said additional evidences were forwarded by learned CIT(A) to A.O for his comments. The A.O submitted remand report , a copy of which was given to the assessee and the assessee submitted its comments to the remand report . The learned CIT(A) dismissed the appeal of assessee vide appellate order dated 23-04-2013 , by holding as under:-

“3.3 I have carefully considered the facts of the case, arguments of the Assessing Officer, finding recorded in the remand report and the written submissions of the Authorised Representative of the appellant. The issue in this case is regarding source of investment of Rs.12,50,000/- made by the appellant in FDs in Kokan Mercantile Bank. The appellant claimed that she had sold gold ornaments to following 4 persons and the sale proceeds were deposited in the FDs in Kokan Mercantile Bank.

S.No.	Name	Weight	Date	Amount
1.	Abdul Kader Rakhangi At & Post Dasoor Taluka- Rajapur, Dist. Ratnagiri, Maharashtra	569 gms.	18.04.2004	3,51,640
2.	Rehana Kalsekar At & Post Dasoor Taluka- Rajapur, Dist. Ratnagiri, Maharashtra	675 gms.	30.04.2004	3,94,875
3.	Ismail Abdul Rakhangi At & Post Dasoor Taluka- Rajapur, Dist. Ratnagiri, Maharashtra	512 gms.	10.06.2004	3,03,360
4.	Ali Saheb Kazi At & Post Dasoor Taluka- Rajapur, Dist. Ratnagiri, Maharashtra	330 gms.	25.12.2004	2,04,765

3.3.1 During remand proceedings the Assessing officer has recorded statement of persons mentioned at Sr. No. 1 and 2 above u/s. 131 of the I.T. Act. Regarding persons at Sr. No.3 and 4 above the Assessing Officer has mentioned in the remand report that documentary evidences were produced. However, the Assessing Officer has not mentioned any details of the nature of evidences produced and why the

same were acceptable. The Assessing Officer has summed up his findings in the remand report as below:

"The facts gathered from the abovementioned statements and details are as under:

- a) Assessee has sold her ornaments which were received to her in wedding by way of Meher.
- b) The ornaments sold to the closed relative in cash and subsequently cash deposited in the bank.
- c) The facts has been substantiate with the statement given on oath by the confirming parties.
- d) The parties whom were purchased gold from the assessee were earned agricultural income by sale of mangoes. The cash proceed received by them is basically in cash, therefore they had purchased gold from the assessee in cash.
- e) The assessee is being in hardship and being the members of the family the parties are decided upon to purchase the ornaments from the assessee.
- f) Moreover, the assessee has suo-moto offered long term capital gain/loss sale of jewellery for the assessment year under consideration."

The Assessing Officer had also requested not to accept the additional evidences as adequate opportunities were offered to the appellant during assessment proceedings.

3.3.2 After going through the copies of the statement of two parties enclosed with the remand report following important observations have been noted:-

- (i) Both the parties have no PAN and have never filed return of income till date.
- (ii) The source of their income have been claimed to be by growing mangoes on agricultural land and selling the same through agents. In support of the earning of income, they had submitted income certificate issued by the Collector office for the purpose of bank loan. As per these certificates, the annual income of Shri Abdul Kadir Rakangi was Rs.5 to 6 lakhs for FY.2004-05 and of Rehana Kalsekar was of RS.7 lakhs for FY.2004-05

(iii) Both the parties have claimed to be relatives of the appellant and stated that they had purchased gold ornaments from her in cash as the appellant was in need of money.

(iv) Both of them did not have any details of itemwise purchase of ornaments.

(v) The copies of their bank accounts or passbooks were not produced showing the sums of payment by them.

(vi) There is no proof available either with appellant or with the parties to substantiate that they have actually purchased gold ornaments from appellant by paying cash.

(vii) A copy of the appellant's Balance Sheet as on 31.3.2005 has been filed. Appellant has failed to file any evidence to substantiate that she was in the possession of gold jewellery as on 31.3.2004 which was subsequently sold by the appellant. No Balance Sheet reflecting the possession of jewellery as on 31.3.2004 has been filed either during assessment proceedings or during appellate proceedings.

(viii) Appellant has not disclosed any capital gain/loss on sale of gold jewellery in the return of income filed for A.Y 2005-06.

3.3.3 In view of the above facts it is clear that appellant has not given any proof till date to substantiate that she was in the possession of gold jewellery and there were also no corroborating evidence to prove that this gold jewellery was sold by her to her relatives in cash. Only two persons were produced who have claimed to have purchased the jewellery from the appellant but their claims are also not supported by any evidence. In respect of another two persons there is no details in the file till date that what kind of evidences were produced by the appellant to substantiate the claim. The purchases have been claimed to be made in cash. Once the acquisition or possession of gold jewellery by the appellant cannot be proved by filing corroborative evidences, how sale of this jewellery can be relied upon as a source for depositing Rs.12,50,000/- in fixed deposits. In view of above observations, this it is held that appellant has not been able to explain the source of investment of Rs.12,50,000/- made in the FDs in Kokan Mercantile Bank. Accordingly, the Assessing Officer was justified in treating this investment of Rs.12,50,000/- as unexplained investment u/s.69 of the I.T.Act and also treating the interest thereon as unexplained income of the appellant. Therefore these grounds are dismissed.”

6. The assessee filed an appeal before the tribunal challenging the appellate order dated 23-04-2013 passed by learned CIT(A).

7. The Ld. Counsel for the assessee at the outset submitted that the whole controversy revolves around one issue that is the investment made by the assessee in FDR with bank to the tune of Rs. 12.50 lacs(A.Y.2007-08-Rs. 30 lacs) and sources for making such investments in FDR. It was submitted that the assessee made an investment in FDR's with banks to the tune of Rs. 12.5 lakh during the impugned assessment year which was added u/s. 69 as an unexplained investment. It was submitted that the assessee died on 2nd February 2017 and it was submitted that death certificate dated 20-02-2017 issued by Government of Maharashtra is filed with the tribunal (which is placed in file) . It was submitted that the legal heirs of the assessee are already brought on record who are three sons of the assessee and are only legal heirs. It was submitted that Revised form 36 has been filed with the tribunal to bring on record legal heirs. it was submitted during the course of assessment proceedings for A.Y 2008-09 u/s 143(3) r.w.s. 143(2), the A.O found that the assessee has not disclosed Bank FDR's made in the earlier years and interest thereon credited in saving bank on Kokan Mercantile Bank in the return of income filed with revenue which led to the addition of the interest in A.Y 2008-09 . it was submitted that the investments made in Bank FDR's in assessment year 2005-06 were Rs. 12.50 lacs(Rs. 30 Lacs for assessment year 2007-08) which were not disclosed to the revenue in the return of income filed with the Revenue as they were not reflected in the Balance Sheet of the assessee and also interest earned on the said FDR's were credited with saving bank account with Kokan Mercantile Bank which was also not disclosed to Revenue which led to the reopening of the concluded assessments for the A.Y 2005-06 and 2007-08 . It was submitted that no representation could be made before the A.O as the assessee was an old lady of more than 80 years who could not make proper representation before the A.O . Our attention was drawn to assessment order page 2/para 4 and it was submitted that assessee's counsel attended before the AO but did not file the required documents/explanations as were required by the AO, which were submitted before learned CIT(A). It was submitted that the AO has made the addition of

Rs 12.50 lacs for assessment year 2005-06(Rs. 30 lacs for AY 2007-08) u/s. 69 as an unexplained investment as the investments made in the FD's with the bank were not disclosed in the return of income filed with the revenue and also sources of making investment in Bank FDR's could not be explained. It was submitted that the additional evidences were submitted before the learned CIT(A) which were forwarded by learned CIT(A) to the A.O and remand report was called . It was submitted that A.O accepted the sources of investment in remand report proceedings but learned CIT(A) did not accept remand report and sustained additions . Our attention was drawn to page no. 2 of the A.O order /para 4 and it was submitted that the assessee duly attended the hearing but could not file complete details before the A.O. .

8. On the other hand, Ld. DR submitted that the during the appellate proceedings , the assessee has submitted some details of the sources of the making of the investments in the FDR's and the A.O in remand report has only asked the learned CIT(A) to deal with the said explanations submitted by the assessee on merits. Our attention was drawn to appellate order of learned CIT(A) at page 4 wherein the AO has only asked the learned CIT(A) to deal with the contention of the assessee on merits. It was submitted that income from long term capital gains(loss) was not declared in the return of income filed with the Revenue but the said capital gains were declared during the course of appellate/remand report proceedings. Our attention was drawn to page 14 of the paper book wherein the remand report dated 26.2.2013 is placed wherein the AO requested the learned CIT(A) to decide the issue of source of cash deposits on merits. Our attention was drawn to page 5 of learned CIT(A) appellate order /para 3.3.3 wherein learned CIT(A) has given his findings in detail that the assessee has failed to substantiate that she was in possession of gold jewellery and also the assessee failed to substantiate that she sold the gold jewellery in cash .

9. The Ld. Counsel in rejoinder relied upon the decision of the Hon'ble Supreme Court in the case of Mehta Parikh 30 ITR 181(SC) and it was submitted that affidavits had been submitted of the relatives of the assessee who have purchased gold jewellery from the assessee. It was submitted that the AO/CIT(A) has not cross examined these persons who have given affidavits . It was submitted that the learned CIT(A) has not accepted the

findings of the A.O but dismissed the appeal of the assessee . The learned counsel for the assessee relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of CIT v. Shanti Swaroop (2002) 255 ITR 0655 (P&H HC) . Our attention was drawn to affidavits executed by assessee narrating facts for AY 2005-06 and 2007-08 which are placed in paper book page no. 22 to 23 and also page no. 40 to 41. Statements on oath given by the persons who have purchased gold from the assessee are placed in paper book page no. 16 to 18 and 19 to 21 . Our attention was drawn to Remand report issued by the A.O. which is placed in paper book / page no. 8 to 10 and also page no. 11 to 15 for A.Y 2005-06 and 2007-08 . Our attention was drawn to question no. 3 and 4 raised by the revenue while recording statement on oath of Sh Abdul Faqir Mohammad Rakhangi (relative of the assessee who bought gold jewellery from assessee) wherein he stated that he is holding agricultural land at Dasoor which is ancestral land and the assessee grew mangoes on the said agricultural land (pb/page 16) . It is submitted that learned CIT(A) sustained the additions only on surmises and conjectures. It was submitted that the learned CIT(A) cannot ignore statements/Affidavit without cross examination of the parties . It was submitted that the A.O has given a favourable report in favour of the assessee in remand report proceedings while learned CIT(A) has erroneously decided the issue against the assessee .

10 Ld. DR in reply to rejoinder submitted that it is a wrong contention advanced by the assessee counsel before the tribunal as the AO has not given any favourable report in remand proceedings in favour of the assessee and AO has only asked the learned CIT(A) to decide the issue on merits . It was submitted by learned DR that no evidence has been produced by the assessee to substantiate its contentions. It is submitted that no sources of making investments in FDR have been declared and contention of the assessee does not inspire confidence. It is submitted that genuineness of the transaction is not proved. It was submitted that case laws relied upon the assessee are not applicable and the genuineness of transaction was not proved . It was submitted that the transaction which are shown to be the sources of the cash deposits in the bank are from close relative which did not inspire confidence as the said persons are not even filing return of income with Revenue and it was prayed that the addition may be confirmed.

11. We have considered rival contentions and perused the material on record including case laws cited by the both the parties . We have observed that assessee filed its return of income on 29.10.2005 u/s 139(1) wherein income declared to the Revenue was to the tune of Rs. 46,096/- . The assessee case was processed by Revenue u/s. 143(1) and no scrutiny proceeding were originally conducted against the assessee u/s. 143 (2) r.w.s. 143(3) for impugned assessment year 2005-06. However, during the course of assessment proceedings u/s 143(3) r.w.s. 143(2) for the assessment year 2008-09 , it was observed by the A.O that the assessee has made fixed deposits with Kokan Mercantile Bank and Bombay Mercantile Bank in the previous year relevant to the assessment years 2005-06 and 2007-08 against which interest income has been credited in Kokan Mercantile Bank saving bank account, where in neither investments in Bank FDR's nor interest income was declared by the assessee to the Revenue , which led to the reopening of the assessment u/s. 147 of the Act. The said saving bank account wherein interest was credited maintained with Kokan Mercantile Bank was also not declared to the Revenue. The assessee was asked to explain the sources of cash deposits in the said bank account which were used to make fixed deposits with this bank to the tune of Rs. 12.50 lacs(Rs. 30 lacs for AY 2007-08) , the assessee did not give any details of sources of making said investment during the course of reassessment proceedings u/s 147 which led to the additions to the tune of Rs. 12.50 lacs(AY 2007-08 Rs 30 lacs) to the income for assessment year 2005-06 , vide assessment order dated 22-12-2011 passed u/s 143(3) r.w.s. 147, while in the appellate proceedings before learned CIT(A) in the first appeal filed by the assessee, the assessee came forward to explain the sources of cash receipts which were deposited in the bank account to make FDR's . The additional evidences were filed during course of appellate proceedings before learned CIT(A) which were forwarded by Ld. CIT(A) to the A.O for remand report. The assessee during the course of appellate proceeding before learned CIT(A) has explained that Rs. 12.5 lakh in cash was received during the impugned assessment year by selling the gold ornaments to following four persons:-

<i>S.No.</i>	<i>Name</i>	<i>Weight</i>	<i>Date</i>	<i>Amount</i>
1.	Abdul Kader Rakhangji At & Post Dasoor	596 gms.	18.04.2004	3,51,640

	<i>Taluka-Rajapur, Dist. Ratnagiri, Maharashtra</i>			
2.	<i>Rehana Kalsekar At & Post Dasoor Taluka-Rajapur, Dist. Ratnagiri, Maharashtra</i>	<i>675 gms.</i>	<i>30.04.2004</i>	<i>3,94,875</i>
3.	<i>Ismail Abdul Rakhangji At & Post Dasoor Taluka-Rajapur, Dist. Ratnagiri, Maharashtra</i>	<i>512 gms.</i>	<i>10.06.2004</i>	<i>3,03,360</i>
4.	<i>Ali Saheb Kazi At & Post Dasoor Taluka-Rajapur, Dist. Ratnagiri, Maharashtra</i>	<i>330 gms.</i>	<i>25.12.2004</i>	<i>2,04,765</i>

During remand proceedings before the AO, the A.O recorded statements on oath of the persons at serial no. 1 and 2 above , u/s. 131 of the Act while for the person at s.no. 3 and 4 above , it is stated by the AO that documentary evidences were produced. The said statements and documents filed are placed by the assessee in paper book/page 16-21 and 26-36 . Now coming to the various documents and contention raised by the assessee during the course of remand proceedings before the AO , it is observed that two persons namely Shri Abdul Kader Faqir Mohammed Rakhangji and Ms. Rehana Kaleskar who have stated to have purchased gold ornaments from the assessee has given a statement under oath , wherein Sh Abdul Kader Faqir Mohammed Rakhangji have stated on oath that he do not hold any PAN and did not any filed any return of income till date . He claimed that he has some agricultural land at Dasoor which is ancestral property wherein mangoes are grown which are sold through agents. That he claimed that he has income of Rs.5 to 6 lakh in financial year 2004-05 and Rs.6 to 7.50 lakh for financial year 2006-07. He also enclosed one certificate issued by the collector office to show his income which was obtained for the purposes of taking bank loan. He has claimed that his agricultural income and past savings were used to buy gold ornaments from the assessee. He was asked to explain itemwise details of ornament purchased but he could not give any detail of the item wise ornament purchased from the assessee but he confirm that he purchased some 550 to 600 gram of gold ornaments from the assessee by

paying cash in financial year 2004-05 and also 600-650 gms of gold ornaments in financial year 2006-07 , but no further detail of purchase of item wise ornament could be submitted by said Mr Abdul Kadir Faqir Mohammed Rakhangi which he confirmed to submit in due course of time but was never submitted later. He also submitted that he does not have any bank account and all dealing were made by him in cash. Similar statements were given on oath by Smt. Rehana Kalsekar before the AO . The assessee has also filed an affidavit (pb 22-23/pb) dated 20-06-2012 wherein she stated that she is pursuing mohmadam religion by birth and got married in 1950 . It was submitted by her in the affidavit that at the time of marriage her husband gave her meher of 4 kg of gold ornaments and 150 kg of Sliver utensil being security as per their tradition/customs in society. It was also averred that she used to buy gold/silver out of her PIN money as well from gifts received in cash .She also averred in the affidavit that she sold gold to the following persons:-

S.No.	Name	Weight	Date	Amount
1.	<i>Abdul Kader Rakhangi At & Post Dasoor Taluka- Rajapur, Dist. Ratnagiri, Maharashtra</i>	596 gms.	18.04.2004	3,51,640
2.	<i>Rehana Kalsekar At & Post Dasoor Taluka- Rajapur, Dist. Ratnagiri, Maharashtra</i>	675 gms.	30.04.2004	3,94,875
3.	<i>Ismail Abdul Rakhangi At & Post Dasoor Taluka- Rajapur, Dist. Ratnagiri, Maharashtra</i>	512 gms.	10.06.2004	3,03,360
4.	<i>Ali Saheb Kazi At & Post Dasoor Taluka- Rajapur, Dist. Ratnagiri, Maharashtra</i>	330 gms.	25.12.2004	2,04,765

She also averred in the said affidavit , details of cash deposits in the Kokan Mercantile Bank Ltd. on following dates

Date of Deposit	Amount
03.05.2004	2,00,000
03.05.2004	2,00,000
03.05.2004	2,00,000
03.05.2004	2,00,000
03.05.2004	2,00,000

01.01.2005

2,50,000

It was stated by her in affidavit that the aforesaid cash deposits in bank were out of proceeds of sale of gold ornaments . The confirmatory letters from these four persons along with details of agricultural land holdings of these four persons were submitted which has been placed on record in paper book page no. 26 to 37. The assessee has also submitted computation of income from long term capital gains/losses from sale of gold ornaments during the remand proceedings before the AO. The A.O submitted remand report to learned CIT(A) wherein he first of all objected to the admission of the said additional evidences as in his opinion sufficient opportunity was granted by him to the assessee in assessment proceedings and there is no justification produced by the assessee for admission of the additional evidences at this stage. Then the AO summarised factual contentions placed by the assessee before him and after reproducing the same left the matter to the learned CIT(A) to be decided by learned CIT(A) on merits. Thus, the contention of the learned counsel for the assessee is devoid of any merits that the AO has adjudicated the issue on merits in remand report proceedings rather the AO only summarised the entire factual details as claimed by the assessee in remand report proceedings and placed the same before learned CIT(A) for him to decide the issue on merits in appellate proceedings. After considering the remand report and the additional evidences submitted by the assessee, the learned CIT(A) rejected the contentions of the assessee by holding that transactions for sale of gold ornaments as claimed by the assessee is not a genuine transaction and the assessee has not given any proof to substantiate that she was in possession of gold jewellery and there is no evidence on record to prove that the said gold jewellery was sold by the assessee to her relative in cash. Thus, learned CIT(A) held that the assessee is not able to explain the sources of investment of Rs.12.50 lacs made in FDR with Kokan Mercantile Bank which was held to be unexplained investments u/s 69 and also treating the interest earned thereon as unexplained income which were held to be taxable in the hands of the assessee, vide appellate order dated 23-04-2013. We have given anxious , careful and patient thought to the whole spectrum of contentions and material on record submitted by the assessee and its appreciation by the authorities below. We are fully aware that the assessee was a senior citizen and an old lady of around 75 years during the impugned assessment year

(DOB 20-01-1930).She died on 02-02-2017 for which necessary death certificates have been placed on record by the assessee. The legal heirs are brought on record and revised form no 36 is filed. We have observed that assessee filed return of income u/s. 139(1) declaring income of Rs. 46,096/-. The assessee has made huge fixed deposits of Rs.12.5 lakh (Rs 30 lacs in AY 2007-08) in bank account with Kokan Mercantile Bank which were made out of cash deposits in the banks and the said bank accounts as well FD's were not declared to the Revenue. An explanations has been sought to be offered by the assessee only after the said fixed deposits with banks were detected by revenue as the fixed deposit made out of said cash deposits and interest earned thereon the said FD's were not declared by the assessee to the revenue in the return of income filed with the Revenue . The case of the assessee was under scrutiny for assessment year 2008-09 when said non disclosure/non declaration of income by the assessee to the Revenue was detected for the first time by the AO which led to reopening of the assessment u/s 147 for impugned assessment year 2005-06 , wherein the assessee has not raised any challenge to reopening of assessment u/s 147 which has reached finality. The assessee came forward with the details of the sources of cash deposits in bank account to the tune of Rs. 12.50 lacs (AY 2007-08 Rs 30 lacs) by brining on record four persons who were close relatives of the assessee out of whom two persons namely Shri Abdul Kader Faqir Mohammed Rakhanghi and Ms. Rehana Kaleskar have given statements on oath before the A.O owning the said transactions for purchase of gold ornaments from the assessee but the entire purchases were claimed to be made in cash. It is stated by said persons that they have agricultural land which is inherited from ancestors and mangoes are grown there and these gold ornaments are purchased from the sale of mangoes in cash and from past savings. They have given document of their land holding and yearly income is in the range of Rs. 5-7 lacs while no return of income has been filed by them nor are they holding PAN . No linkages of cash withdrawal from bank has been brought on record rather the said persons claimed that they are not maintaining any bank account and/or the bank accounts ,if maintained were not produced before the AO. No contemporaneous evidences are brought on record to prove these purchases of gold by these persons from the assessee. These two persons were not having PAN and not filing return of income with the Revenue. The said gold so purchased from

the assessee has not been declared and disclosed by these buyers to the Revenue in return of income filed with Revenue in-fact both of them were not filing their income-tax returns with Revenue. These persons carried out all transactions of purchase of gold ornaments in cash. These two persons claimed that they own agricultural land which is their agricultural land wherein mangoes were grown and they have income from sale of mangoes which are sold through agents for which proceeds are realised in cash. The income from these agricultural activity is also stated to the tune of Rs. 5-7 lacs in a year. No cash flow statements have been submitted by these persons to substantiate that cash was duly utilised to buy gold ornaments and their earnings were sufficient to sustain their family requirements etc.. These two persons could not give item wise details of ornaments purchased from the assessee when specifically asked by Revenue , while it was expected from them at the time of recording of statement to carry all details with them. They promised to give item-wise details of ornaments purchased from the assessee but no details were filed by the said persons subsequently. The confirmatory letters were also produced from the four persons who bought the gold (including two persons who gave statement on oath) confirming the transaction of purchase of gold ornaments from the assessee. The land holdings of these persons wherein mangoes were claimed to be grown is brought on record and is stated by all that they are agriculturist and income from sale of mangoes as well past savings were utilised to buy gold of Rs 12.50 lacs(Rs. 30 lacs in AY 2007-08) . The assessee has also executed an affidavit averring that the transactions for sale of gold ornaments to these four persons was in cash . Deposits of a such huge amount of cash in the bank account being 12.5 lakh in A.Y 2005-06 and Rs.30,00,000/- for A.Y 2007-08 has to be properly explained by the assessee with cogent evidences and material especially contemporaneous evidences which could establish that transactions as claimed did took place at that point of time which can inspire confidence. None of the contemporaneous evidences are brought on record by the assessee to substantiate the happening of the transaction at that time. it is important to refer to provisions of Section 106 and 114(g) of the Indian Evidence Act,1872. Section 106 of the 1872 Act stipulates that burden of proving fact which is especially within the knowledge of any person is on that person. Similarly Section 114(g) of the 1872 Act stipulates that the evidence which could be and is not produces would , if produced, be

unfavourable to the person who withholds it. The assessee's has claimed that 4 kg of gold ornaments and 150 kgs of silver utensil were given to her as meher as per mohmadam customs and she was married in 1950 . It was also averred that gold ornaments were purchased from time to time out of her PIN money and gifts received. The assessee has not brought on record any evidence of contract of meher in her favour nor independent witnesses are brought on record to substantiate that the said meher was granted in her favour by her husband at the time of marriage. There is no evidence on record which substantiate this contention of the assessee and this is to be evaluated on touchstone of preponderance of probabilities as the assessee has never declared gold/silver holdings in the returns of income filed with Revenue nor the said details are filed with any authorities as no such evidences is brought on record. Even details as to family background/status of the family including assets and earnings of family members are not submitted to substantiate that such gold /silver holding is reasonable keeping in view family background/status of the assessee. The assessee has not brought on record any evidences of buying gold/silver by way of invoices or cheque payments to substantiate its claim that she bought gold/silver from time to time from her PIN money or gifts. No details of family background and status of the family including their earnings and assets has been brought on record to justify holding of gold / silver of such magnitude. The assessee has not since 1950 ever declared these holdings of gold /silver in income tax returns filed with Revenue. The assessee did not ever file any wealth tax returns with the Revenue. The assessee has originally filed return of income u/s 139(1) but did not declare income from capital gains arising from sale of gold ornaments as claimed by the assessee. The assessee has filed one valuation report dated 16-04-2002 valuing her gold ornaments and silver utensil held by her at 31-03-2002, which is issued by Sh. Ajit Amarchand Jhaveri (approved valuers) which is placed in paper book/page 62-64. It is not explained by the assessee why she obtained said valuation report in 2002 and having so obtained why she did not acted upon the said valuation report by declaring the said gold/silver in her income tax returns and also she needed to explain why she did not filed her wealth tax return thereafter even after obtaining the said valuation report in 2002 which establishes her liability towards wealth tax. Even the assessee did not declare and brought on record the said gold ornaments/silver in her balance

sheets filed with Revenue even after obtaining valuation report in 2002. It is also not brought on record whether the said valuer raised any invoice for his fee for doing this valuation report and whether any payment for said fee was made by cheque at that point of time. The onus was on the assessee to prove genuineness of the transaction for purchase, acquisition and sale of gold/silver which the assessee failed to discharge. Thus, the contention of the learned counsel for the assessee is devoid of any merits that the AO has adjudicated the issue on merits in remand report proceedings rather the AO only summarised the entire factual details as claimed by the assessee in remand proceedings and placed the same before learned CIT(A) for him to decide the issue on merits. The case laws relied upon by the assessee are clearly distinguishable. In the case of Shanti Swarup(supra), Hon'ble Punjab and Haryana High Court upheld the decision of tribunal as the decision of the tribunal was based on appreciation of facts. This decision has no application to the case in hand which is decided on its own facts on merits. The assessee has also placed reliance on decision of Hon'ble Supreme Court in the case of Mehta Parikh & Co(supra) is a case where cash book stood accepted and affidavits were produced before AAC to explain the transactions, it was held that affidavit could not be rejected in the absence of cross examination of the deponent. In the instant case before us statements of two persons who allegedly purchased gold from the assessee in cash were recorded wherein they explained that they purchased gold from assessee in cash from agricultural income. These persons could not submit item wise details of ornaments purchased from assessee nor they could submit the cash flow statements to justify the purchase of gold from the assessee in cash. They each have income of only Rs. 5-7 lacs per year only and they claimed that they purchased gold of Rs 3.50-Rs 4.0 lacs each from the assessee which does not inspire confidence on the touchstone of preponderance of probabilities also. No contemporary evidences have been brought on record by either party to substantiate and prove genuineness of purchases of gold from the assessee. They have not declared the said gold in their returns of income rather they did not even held PAN nor had ever filed any return of income with Revenue. They did not either held bank accounts or they did not produce the bank accounts either before the authorities below. These persons are also close relatives of the assessee. Thus, the statements of the said persons who were witnesses is not supported by

evidences on record. The affidavit of the assessee is a self serving document, while we have observed serious flaws and deficiencies in the contention of the assessee which are detailed above and are not repeated again . Keeping in view entire factual matrix of the case as detailed above , we have observed that the whole story of sale of gold ornament/silver in cash to close relatives was set up by the assessee after the assessee was cornered by Revenue and it does not inspire confidence , thus her contentions are hereby rejected because neither the purchase/holding of gold ornaments/silver is proved nor the genuineness of the sale of gold ornaments/silver stood proved based on material on record. The said FDR's and interest earned on them were never declared by the assessee to the Revenue and was detected by the Revenue during the course of assessment proceedings for AY 2008-09 while led to reopening of assessment u/s 147 for the impugned assessment year 2005-06 and assessee in order to justify the receipt of cash of approx. Rs.52.5 lakh which stood deposited in Bank account in previous years relevant to A.Y 2005-06 and 2007-08 came forward with this theory of sale of gold ornaments/silver in cash to close relatives who are not even holding PAN and are not filing return of income with Revenue . The statements on oath recorded of these persons who are close relatives and stated to have purchased gold ornaments in cash from the assessee do not inspire confidence due to various reasons cited above. The affidavit submitted by the assessee is a self serving documents which is rejected in the absence of cogent and reliable evidences on record to substantiate assessee's contentions. it is important to refer to provisions of Section 106 and 114(g) of the Indian Evidence Act,1872. Section 106 of the 1872 Act stipulates that burden of proving fact which is especially within the knowledge of any person is on that person. Similarly Section 114(g) of the 1872 Act stipulates that the evidence which could be and is not produces would , if produced, be unfavourable to the person who withholds it. Thus, the onus was on the assessee to have bring on record cogent and reliable evidences to support her contentions. However, we cannot also shut our eyes to reality of Indian lives wherein there is a love, pride and preference of Indian households to invest and hold gold ornaments etc for their usage as well for rainy days wherein gold can be sold to tide over financial difficulties. However, we also note that there is a CBDT instruction/guidelines no. 1916 dated 11th May, 1994 which although relates to non seizure of gold during the course of

search operation u/s 132 which has duly considered Indian traditions and culture , wherein it is permitted by CBDT not to seize gold ornaments and jewellery in case of married lady to the tune of 500 gram in the course of search operations where no wealth tax returns are filed by said married lady and hence we are of the view that the explanation of the assessee of holding of the gold ornament/jewellery to the tune of 500 gram stand accepted , while the rest of the theory of selling balance of the gold /silver as put forward by the assessee stood rejected and it is held that the assessee could not substantiate the genuineness of the transaction for the balance quantity of sale of gold ornaments/silver and hence after giving credit for value of gold to the tune of 500 gms, rest of the amount shall be charged to tax in the hands of the assessee as undisclosed income . While for sale of 500 gram of the gold , the same shall be brought to tax by computing income from capital gains for which the assessee shall submit necessary details which shall be verified by the AO in accordance with law. Thus, we confirm the appellate order of learned CIT(A) with above modification wherein the assessee will get part relief as detailed above. We order accordingly.

12. In the result appeal of the assessee in ITA no. 4084/Mum/2013 for AY 2005-06 is partly allowed. We order accordingly.

13. Now we will take up appeal for AY 2007-08 in ITA No. 5448/Mum/2013. Our decision in ITA no. 4084/Mum/2013 for assessment year 2005-06 shall apply mutatis mutandis to the appeal of the assessee in ITA no. 5448/Mum/2013 for AY 2007-08 as the facts are similar for both the years. We clarify that benefit of afore-stated CBDT instruction/guideline shall be extended once and not twice separately for both the years under consideration. The assessee has also received gift of Rs. 3.0 lacs in cash from Mr Abdul Kader Fakir Mohammed Rakhangi , a close relative. The cash received by the assessee from gifts of Rs. 3,00,000/- also did not stand proved as no gift deed/confirmations are produced from donor by the assessee nor genuineness of the gift is proved. The said donor has claimed to have not maintained any bank account . He has claimed to have given gift of Rs. 3,00,000/- as well purchased gold of Rs. 5.62 lacs from the assessee for impugned assessment year out of his total claimed income from agriculture from sale of mangoes of Rs. 6-7.50 lacs. He does not hold any PAN and has never filed return of income .. We have already discussed about

creditworthiness of said Mr Abdul Kader Fakir Mohammed Rakhangi while advertng to his purchases of gold from the assessee while adjudicating appeal for AY 2005-06 nor even genuineness of gift in cash from Mr Abdul Kader Fakir Mohammed Rakhangi is proved. It is incomprehensive that he has income of Rs. 6-7.50 lacs for the previous year relevant to assessment year 2007-08 and he has utilised Rs 8.62 lacs in purchasing gold and giving gift to assessee. We order accordingly.

14. In the result appeal of the assessee in ITA no. 5448/Mum/2013 for AY 2007-08 is partly allowed. We order accordingly.

15. In the result, both the appeal of the assessee's for AY 2005-06 and 2007-08 respectively are partly allowed as indicated above.

Order pronounced in the open court on 29.09.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 29.09.2017 को की गई।

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 29.09.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI