

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 433/JP/2018
निर्धारण वर्ष / Assessment Year :2014-15

Bithal Dass Mundra, 16, Jhalawar Road, Kota.	बनाम Vs.	D.C.I.T., Central Circle, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADCPM 1452 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri C.M. Birla (CA)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (JCIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2018
उदघोषणा की तारीख / Date of Pronouncement : 20/12/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 01/02/2018 of Id. CIT(A)-IV, Jaipur for the A.Y. 2014-15. The assessee has raised following grounds of appeal:

- "1. That under the facts and circumstances of the case the Hon'ble CIT(A) erred in not considering that FY 2013-14 being the search year the issuance of notice u/s 142(1) r.w.s. 153A for Ass.Year 2014-15 was beyond legislative powers of the learned AO and therefore entire proceeding based on this illegal notice being void the order u/s 143(3) r.w.s. 153B(1) deserves annulment.*
- 2. That without prejudice to GOA-1 above the Hon'ble CIT(A) erred in confirming addition/disallowance of Rs.245431/- from interest a/c.*

3. *That without prejudice to GOA-1 above the Hon'ble CIT(A) further erred in confirming addition of Rs.94809/- in Dairy Business Income.*
4. *That without prejudice to GOA-1 above the Hon'ble CIT(A) also erred in confirming addition of Rs. 1500000/- for unexplained investment in jewellery ignoring explanation made by the appellant and not considering following evidences which all totals to Rs. 1588450/-:-*
 - (i) *Copy of Jewellery purchase bill dated 16.05.2011 of Rs.361000/- by Seema Mundra and her Balance Sheet as at 31.03.2012;*
 - (ii) *Copy of Jewellery purchase bill dated 30.01.2013 and 12.11.2012 for Rs.105000/- and Rs.134750/- by Sarla Mundra and her Balance Sheet as at 31.03.2013;*
 - (iii) *Copy of Jewellery purchase bill dated 30.01.2013 for Rs.420000/- by Rukmani Mundra and her Balance Sheet as at 31.03.2013;*
 - (iv) *Copy of Jewellery purchase bill dated 07.04.2008 for Rs.117700/- by Seema Mundra and her Revised Computation of Total Income by Seema Mundra wherein income of Rs.117700/- is shown by her and she has paid tax Rs.59100/-; and*
 - (v) *Copy of Jewellery purchase bill dated 10.02.2012 for Rs.450000/- by Sarla Mundra and her Revised Computation of Total Income wherein she has income of Rs.450000/- and have paid tax of Rs. 173690/-.*
5. *That the appellant craves leave to add, alter, amend, modify and/or otherwise substitute any of the foregoing ground: as and when required."*

2. Ground No. 1 of the appeal is regarding the validity of assessment framed U/s 143(3) read with Section 153B(1)(b) of the Income Tax Act, 1961 (in short the Act). There was a search U/s 132 of the Act on 13/8/2013 in Mundra Group, Kota to which the assessee belongs. During the course of search and seizure action, various assets, books of account and documents were found and seized as per Annexure prepared at the

time of search. The assessee did not file return of income U/s 139(1) of the Act and it was filed only on 16/12/2014 after the notice U/s 142(1) read with Section 153A was issued by the Assessing Officer on 12/12/2014. The assessment was finally completed U/s 143(3) read with Section 153B(1)(b) of the Act.

3. The Id AR of the assessee has submitted that the year under consideration does not fall in any of six assessment years immediately preceding to the assessment year relevant to the previous year in which search is conducted or requisition is made. Thus, the Id AR has submitted that the assessment year under consideration is relating to the previous year in which the search was carried out and therefore, the provisions of Section 153A of the Act are not application for the year under consideration. The Assessing Officer issued notice U/s 142 read with Section 153A of the Act which is not valid when the assessment year under consideration is relating to the previous year in which search was conducted. The assessment order U/s 153A of the Act can be framed for six assessment years immediately preceding assessment year relating to the previous year in which the search was conducted or requisition was made. Hence, the impugned assessment framed by the Assessing Officer is not valid in the eyes of law and is void ab initio. In support of his contention, he has relied upon the decision of the Chandigarh Benches of

the Tribunal in the case of Rajiv Kumar Vs ACIT 186 TTJ 522 as well as decision of the Coordinate Bench of this Tribunal dated 21/6/2018 and 25/06/2018 in case of Smt. Seema Mundra Vs DCIT and M/s Mundra & Jain Marbles Vs DCIT in ITA No. 431/JP/2018 and 432/JP/2018 respectively. Thus, the Id AR has submitted that this assessment year being the search year, the Assessing Officer should not have issued notice U/s 153A of the Act but the assessment could have been framed U/s 143(3) by issuing the notice U/s 143(2) of the Act. Hence, the Id AR has submitted that the assessment framed by the Assessing Officer is invalid and liable to be quashed.

4. On the other hand, the Id. CIT-DR has submitted that the Assessing Officer has not framed the assessment U/s 153A of the Act but the assessment has been framed U/s 143(3) after complying the procedural conditions of issuing notice U/s 143(2) of the Act. Since the assessee did not file the return of income U/s 139(1) of the Act, therefore, the Assessing Officer issued notice U/s 142 of the Act and consequently after the return of income filed by the assessee, the Assessing Officer has proceeded to frame the scrutiny assessment by issuing notice U/s 143(2) of the Act. He has relied upon the order of the Id. CIT(A).

5. We have considered the rival submissions as well as the relevant material on record. The assessee has raised the legal issue of validity of assessment framed by the Assessing Officer on the ground that the assessment year under consideration pertains to the previous year in which search was conducted on 13/8/2013 and therefore, the provisions of Section 153A of the Act are not applicable for assessment of the year under consideration. There is no quarrel on the point that the provisions of Section 153A of the Act are applicable for making the six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted or requisition was made. The assessment year under consideration is undoubtedly not following in six assessment years for which the assessment U/s 153A of the Act can be framed but this assessment year is relevant to the previous year in which the search was conducted on 13/8/2018. The sole basis of challenging the validity of the assessment is the notice issued by the Assessing Officer on 12/12/2014 U/s 142(1) read with Section 153A of the Act. It is pertinent to note that prior to the notice dated 12/12/2014, there was no return of income filed by the assessee U/s 139(1) of the Act despite the limitation for filing the return of income U/s 139(1) of the Act was already expired, therefore, in such a case, where the assessee has not filed the return of income U/s 139(1), the Assessing Officer may issue and serve a notice

U/s 142(1) of the Act asking the assessee to furnish a return of income in the prescribed form within a period as directed in the notice. For ready reference, we quote Section 142(1) of the Act as under:

142. (1) ⁶²For the purpose of making an assessment under this Act, the ⁶³[Assessing] Officer may serve on any person who has made a ⁶²return ⁶⁴[under [section 115WD](#) or [section 139](#)⁶⁵] [or in whose case the time allowed under sub-section (1) of [section 139](#)] for furnishing the return has expired] a notice requiring him, on a date to be therein specified,—

⁶⁶[(i) where such person has not made a return ⁶⁷[within the time allowed under sub-section (1) of [section 139](#)] ⁶⁸[or before the end of the relevant assessment year], to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner⁶⁹ and setting forth such other particulars as may be prescribed, or :]

⁷⁰[**Provided** that where any notice has been served under this sub-section for the purposes of this clause after the end of the relevant assessment year commencing on or after the 1st day of April, 1990 to a person who has not made a return within the time allowed under sub-section (1) of [section 139](#) or before the end of the relevant assessment year, any such notice issued to him shall be deemed to have been served in accordance with the provisions of this sub-section,]

⁷¹[(ii) to produce, or cause to be produced, such accounts or documents as the ⁷²[Assessing] Officer may require, or

⁷³[(iii) ⁷⁴to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the ⁷⁵[Assessing] Officer may require :

Provided that—

- (a) the previous approval of the ⁷⁶[Joint Commissioner] shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts;
- (b) the ⁷⁷[Assessing] Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

Once the assessee has undisputedly not filed the return of income U/s 139(1) of the Act then the Assessing Officer was well within his powers and jurisdiction to issue a notice U/s 142(1) requiring the assessee to furnish return of income in the prescribed form and verified in prescribed manner and set forth such other particulars as may be prescribed. Therefore, the notice issued U/s 142(1) of the Act on 12/12/2014 is well within the framework of procedure for assessment provided under Chapter (xiv) of the Act. It is not the case where the assessee had already filed return of income and in pursuant to the search, the Assessing Officer has again issued a notice U/s 153A of the Act for requiring the assessee to file again return of income for completing of assessment U/s 153A of the Act. We further note that the assessment was also completed U/s 143(3) read with Section 153B(1)(b) of the Act, therefore, the assessment was framed as per the provisions applicable for the year under consideration. The assessment was completed U/s 143(3) and within the time limit provided U/s 153B(1)(b) of the Act, therefore, we do not find any infirmity in the assessment order framed by the Assessing Officer simply because the notice issued U/s 142(2) of the Act also mentions "read with Section 153A of the Act". This may be only a mistake of mentioning an unnecessary section but the contents of the notice are only as required by provisions of Section 142(1) of the Act. Therefore, the

notice in substance was issued U/s 142(1) of the Act. We further note that after the said notice issued U/s 142(1), the assessee filed return of income and thereafter the Assessing Officer issued a notice U/s 143(2) of the Act for completing the scrutiny assessment. The assessee has not disputed the fact that the Assessing Officer has issued a notice U/s 143(2) of the Act on 10/6/2015, therefore, the assessment framed U/s 143(3) was strictly as per the provisions of the Act. As far as the decisions relied upon by the Id AR of the assessee, we note that these decisions are on the point where the Assessing Officer has initiated the proceedings of assessment U/s 153A of the Act and also framed the assessment U/s 153A of the Act whereas in the case in hand the assessment was framed U/s 143(3) of the Act and within the time limit provided U/s 153B(1)(b) of the Act. Therefore, the issuance of notice U/s 142(1) of the Act calling upon the assessee to file the return as there was no return of income U/s 139(1) of the Act is well within the scope and procedure provided under Chapter (XIV) of the Act. The Coordinate Bench of this Tribunal in the case of Smt. Seema Mundra Vs DCIT (supra) has considered this issue in para 2.1 to 2.4 as under:

"2.1 Apropos Ground No. 1 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

"3. In the present case, it is seen that appellant derived income from job work in her proprietorship concern namely M/s. Preet Stone Industries,

interest income and also declared agricultural income. Appellant c-filed her original return of income on 29-11-2014 for the A.Y. 2014-15 declaring total income at Rs. 2,81,210/- and also declared agricultural income of Rs. 1,72,000/-.

Appellant belongs to Mundra Group, Kota on whose premises, a search u/s 132 of the Act was carried out on 13-08-2013. Various assets/books of accounts and documents were found, inventorized and seized as per annexure prepared during the course of search. Pursuant to this, AO issued a notice u/s 142(2) r.w.s. T53A of the Act to the appellant, in compliance of which, appellant filed her return of income on 19-01-2015 for the A.Y. 2014-15 declaring total income at Rs. 2,81,210/- and also declared agricultural income of Rs. 1,72,000/-. Finally, AO completed assessment u/s 143(3) r.w.s. 153B(1)(b) of the Act vide order dated 29-01-2016 at a total income of Rs. 10,15,250/-.

4.....

5. The appellant has taken a legal ground that since notice u/s 153A was issued to him for the instant A. Yr. the entire assessment should be quashed. The appellant has cited Sec 153A to state that for this A. Yr. notice cannot be issued.

I have perused the ground and submission made. I am of the view, though notice u/s 153 A need not be issued for the instant A.Yr. being search assessment year (date of search being 13-08-2013), it does not cause any prejudice to the appellant. Further, admittedly no dispute, legal or procedural, is raised by the appellant either before the AO or before me regarding completion of assessment u/s 143(3). Merely issue of notice u/s 153A and mentioning of same in the top header of assessment order docs not vitiate the entire order. On the facts and in the circumstances of the, in my view the legal objection raised by the appellant deserves to be dismissed. Appellant's appeal in Ground No. 1 is dismissed

2.2 During the course of hearing, the Id.AR of the assessee prayed for quashing of the assessment order for which the Id.AR of the assessee filed the following written submission.

"Before we proceed further we submit sec. 153A has been amended by the Finance Act 2017 w.e.f. 01.04.2017. Because of amendment in section 153A(1)(a), 153A(1)(b), its three provisos, section 153B and 153C

after six assessment years - and for the relevant assessment year or years is inserted.

We however submit this amendment is effective from 01.04.2017; it does apply where search under section 132 of the Income-tax Act is initiated or requisition under section 132A of the Income-tax Act is made on or after the 1st day of April, 2017 and it applies to assessment years preceding to search years only.

Though the Hon'ble CIT(A) has accepted that this Ass. Year being search year the AO should not have issued notice u/s 153A but to him as it has not caused any prejudice to assessee and as the AO has issued notice u/s 143(2) before assessment u/s 143(3) is finalized merely issue of notice u/s 153A and mentioning of same in the top header of assessment order does not vitiate the entire order. We submit Hon'ble CIT(A) failed to appreciate that there are plethora of judgments wherein because of failure to give notice u/s 143(2) assessment completed u/s 143(3) are vitiated.

In circumstances akin to us Hon'ble Chandigarh Bench in Rajeev Kumar vs. AC1T (2017) 186 TTJ 522 relying on decision of Hon'ble Delhi Bench of ITAT in Upendra Kumara Sharma vs. DCIT, Circle 9(1) (ITA No.3141/DEL/09 dated 12.04.2010) have quashed assessment order. We may add that decision of Hon'ble Chandigarh Bench (supra) does answer doubts raised by Hon'ble CIT(A) also.

We therefore submit assessment order be quashed. "

2.3 *On the other hand, the Id. DR supported the order of the Id. CIT(A).*

2.4 *We have heard the rival contentions and perused the materials available on record. It is not imperative to repeat the facts and circumstances of the case as the Id. CIT(A) has elaborately discussed the issue in his order. However, it is noted that on the similar issue the ITAT Chandigarh Bench in the case of Rajeev Kumar vs ACIT (2017) 186 TTJ 522 relying on decision of ITAT Delhi Bench in the case of Upendra Kumar Sharma vs DCIT Circle - 9(1) (ITA No. 3141/Del/09 dated 12-04-2010) has quashed the assessment order. The relevant observation of ITAT Chandigarh Bench is as under:-*

“11.....It is well settled that an assessment is to be framed for the previous year which precedes the assessment year. Therefore, for the previous year 2006-07, the assessment year 2007-08. this assessment year succeeds the period of search and not precedes. From the plain language of the provisions contained in cl. (b) of sub-s(1) of section 153A of the Act, it is clear that the assessment under section 153A of the Act could have been framed for the 6 Assessment Years which precedes the assessment year 2007-08. Therefore, we are of the confirmed view that the assessment under section 153A of the Act could have been framed from the Assessment Years 2001-02 to 2006- 07 only and not for the Assessment Year 2007-08. As the assessment for the Assessment Year under consideration was framed by the AO under section 153A of the Act, therefore, this assessment was not valid in the eyes of law and of initio. Thus the same is quashed. Since we have quashed the assessment order under consideration considering the same as invalid, no findings are given on other grounds raised by the assessee.”

Respectfully following the decision of ITAT Chandigarh Bench in the case of Rajeev Kumar vs. ACIT (supra), it is noted that the legal objection raised by the assessee before the Id. CIT(A) has merit and we concur with the submissions of the assessee. Thus Ground No. 1 of the assessee is allowed.”

Thus, it is clear from the facts recorded in the said case that a notice was issued by the Assessing Officer U/s 153A of the Act and the Tribunal has decided the issue by considering that the Assessing Officer initiated the proceedings U/s 153A of the Act whereas in the case in hand, the Assessing Officer issued a notice U/s 142(1) of the Act on 12/12/2014 because the assessee did not file any return of income U/s 139(1) of the Act. As apparent the facts in the case in hand are distinguishable and therefore, the decisions relied upon by the assessee will not help the case of the assessee. Accordingly, in view of the above facts and

circumstances of the case as well as the above discussion, we do not find any substance or merits in the ground No. 1 of the assessee's appeal, hence, the same is dismissed.

6. Ground No. 2 of the appeal is regarding the disallowance of interest of Rs. 2,45,431/-. During the course of assessment proceedings, the Assessing Officer noted that the assessee has claimed loss on account of interest income of Rs. 2,45,431/- in computing total income. The Assessing Officer asked the assessee to explain and file the supporting evidence for claim of loss on account of interest income. However, no reply or submission was filed by the assessee, accordingly the Assessing Officer made an addition of Rs. 2,45,431/-.

7. On appeal, the Id. CIT(A) has confirmed the addition made by the Assessing Officer.

8. Before us, the Id AR of the assessee has submitted that the assessee has shown the loss on account of interest income as part of business profits. Further the department has accepted this claim in the earlier years and assessee has been taking a consistent decision of treating the interest income or loss as part of the business income of the assessee. He has further submitted that in the P&L account, the assessee has debited/credited interest paid or received from different persons

together with bank charges wherein there is net loss of Rs. 2,45,431/-.

The borrowings and investment are so intermixed that it is not possible to segregate wherein a particular fund is invested and therefore, while computing the taxable income, net loss from this head has been taken by the assessee under the head Profit and Gain of business and profession.

For the A.Y. 2013-14, a similar profit and loss account prepared wherein surplus of Rs. 88,62,588/- was credited to P&L account under the head "business" which was not disputed by the Assessing Officer in scrutiny assessment. Following the past year, the assessee has claimed set of loss from one source to another source under the same head of income which is allowable U/s 70 of the Act. Therefore, there is no reason to disallow the claim of loss on account of interest of Rs. 2,45,431/-.

9. On the other hand, the Id CIT-DR has relied upon the orders of the authorities below and submitted that when the assessee has used the borrowed fund for investment purposes then the expenditure on account of interest against the investment cannot be allowed as claimed against the business income.

10. We have considered the rival submissions as well as the relevant material on record. There is no dispute that the assessee has shown loss on account of interest income of Rs. 2,45,431/- as the assessee has

arrived net figure after taking the interest payment and interest receipt. This net amount is taken to the P&L account without specifying the interest payment or interest income arising from which source of income whether the interest expenditure is on account of fund entirely used for investment which has yielded interest income or the interest expenditure pertains to the fund used for business purpose of the assessee. The explanation of the assessee is that the funds are so intermixed and interconnected that the nexus is not verifiable. However, it is also not in dispute that a similar treatment has been given by the assessee in the past and therefore, it is not possible to give a concluding finding without having the complete details of accounts of interest income and the interest expenditure. The Id. CIT(A) has considered this issue in para 5.2.3 as under:

“5.2.3 I have perused the appellant submissions and order of the AO with regard to this ground. The AO has specifically made a disallowance of Rs.2,45,431/- as the claim of loss on account of interest income (as evident from personal P&L account) was not justified/fortified with explanation by the appellant. Even at the appellate stage the appellant is stating that his funds are so intermixed and interconnected that nexus is unverifiable. In short the appellant has not offered explanation to justify the loss as is evident from the personal P&L account. In absence of plausible explanation, the disallowance of loss made by the AO of Rs. 2,45,431/- is confirmed. Appellant’s appeal in Ground No. 2(i) is dismissed.”

Once the assessee has claimed the loss on account of interest then it is the primary onus of the assessee to prove and establish the allowability of the claim against the business income. To the extent of the interest which was paid on the fund used for investment, the same cannot be allowed against the business income. The assessee has expressed his inability to segregate the details, therefore, in the facts and circumstances of the case, we do not find any reason to interfere with the order of the Id. CIT(A), hence, this ground of assessee's appeal is dismissed.

11. Ground No. 3 of the appeal is regard the addition of Rs. 94,809/- in dairy business. The Assessing Officer noted that the assessee has declared net profit of Rs. 5,86,000/- on total turnover of Rs. 69,29,175/- from dairy business of M/s Mundra Dairy Udhog. The Assessing Officer further noted that this net profit also includes interest from bank as well as closing stock. The Assessing Officer recomputed the net profit after excluding the bank interest of Rs. 1,475/- and closing stock of Rs. 1,25,000/-. The net profit comes to Rs. 4,59,525/- whereas as per the provisions of Section 44AD of the Act, the Assessing Officer proposed to adopt net profit @ 8%, consequently the Assessing Officer made addition of short fall of Rs. 94,809/- to the income of the assessee.

12. On appeal, the Id CIT(A) has confirmed the addition made by the Assessing Officer.

13. Before us, the Id AR of the assessee has submitted that the Assessing Officer has excluded the closing stock from the net profits of Rs. 5,86,000/- which is not permissible as the closing stock is very much part of the business profits of the assessee. The Id AR has thus submitted that even after reducing the bank interest, the net profit of Rs. 5,84,525/- comes net profit @ 8.44% and therefore, there is no justification for making the addition of Rs. 94,809/-.

14. On the other hand, the Id DR has relied upon the orders of the authorities below.

15. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has adopted 8% net profit as deemed income from the dairy business of M/s Mundra Dairy Udhyog, however, while computing the net profit, the Assessing Officer excluded the closing stock from the net profit declared by the assessee. We find that this action of the Assessing Officer is contrary to the principle of accounting and computation of income. Once the assessee has declared net profit which is to be taken for the purpose of income tax then the exclusion of closing stock from the net profit is not permissible. Even

otherwise while computing the net profit as per the principle of accounting standards, the opening and closing stock are very much part of the P&L account and cannot be excluded for the purpose of even estimating the income U/s 44AD of the Act. Once the assessee has declared net profit of more than 8% even after excluding the interest income of Rs.1,475/- then no addition is called for. Therefore, the net profit declared by the assessee excluding the interest income is 8.44% then even applying the deeming provisions of presumptive income U/s 44AD of the Act, no addition is called for as the net profit declared by the assessee is more than 8% as provided U/s 44AD of the Act. Accordingly we delete the addition made by the Assessing Officer.

16. Ground No. 4 of the appeal is regarding the addition on account of unexplained investment in jewellery. During the search operation, jewellery and silver articles of Rs. 1,72,21,146/- were found from the residence of Shri B.D. Mundra. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the ownership of jewellery and other silver articles as well as source and year of acquisition of the jewellery with documentary evidence. The assessee in reply dated 14/09/2015 referred to the CBDT Instruction No. 1916 dated 11/5/1994 and therefore, sought benefit of jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per

unmarried lady and 100 gms. per male member of the family. The assessee also submitted that gold jewellery stock was declared in VDIS 1997 by the family members and addition on account of its recycling jewellery purchased and shown in the books. Thus, after claiming the benefit of the Circular of the CBDT as well as the jewellery declared in the VDIS 1997, the assessee contended that the excess jewellery which was as per the documents found during the search has been declared in the revised return of income and paid tax. The Assessing Officer did not accept this explanation of the assessee for want of supporting documentary as source of jewellery, the Assessing Officer has submitted that the excess of jewellery of 500 gms. and 100 gms. for married lady and male member respectively is not acceptable as the same is for the purpose of seizure of jewellery at the time of search and cannot be taken as proof for source of investment. Since these jewellery items were not declared in the books of account or no wealth tax return was filed by any of the members of this group, therefore, the Assessing Officer did not accept this explanation as regards the declaration in VDIS 1997. The Assessing Officer has observed that the assessee failed to furnish any corroborative evidence to prove the source of jewellery or its acquisition in past years prior to assessment year 2008-09 except the declaration. Accordingly, the Assessing Officer accepted the reasonable quantity of

jewellery to the extent of Rs. 1,57,21,000/- and the balance of Rs. 15.00 lacs was added to the income of the assessee.

17. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) but could not succeed.

18. Before us, the Id AR of the assessee has submitted that the Assessing Officer has made addition of Rs. 15.00 lacs on account of unexplained jewellery whereas the assessee produced copies of purchase bills in respect of the purchases made after 01/4/2007 but before the date of search. The Assessing Officer did not consider the purchase bill produced by the assessee. He has further submitted that some of the jewellery purchased from the year 2011-12 to 2012-13 were duly recorded in the books, therefore, whatever the balance jewellery for which incriminating documents were found and seized, the assessee declared the same in the revised return. The Id AR has thus, submitted that in spite of the fact that the copies of the purchase bills, balance sheet and revised return of income were filed before the Id. CIT(A), however, he did not find copies of purchase bills in the file of the Assessing Officer and confirmed the addition. He has referred to the letter dated 14/09/2015 filed during the assessment proceedings for the A.Y. 2014-15. Though the said letter was kept in the file of B.D. Mundra and sons

instead of file of the assessee. The Id AR has pointed out that since this letter was submitted on the letter head of B.D. Mundra & Sons, therefore, the Assessing Officer has placed this letter in the file of the B.D. Mundra & Sons instead of assessee. He has referred to the purchase bills of Rs. 10,20,750/- made between 16/05/2011 to 30/01/2013. The Assessing Officer has also not considered the jewellery of Rs. 5,67,700/- recorded in the books of account which was purchased on 07/07/2008 and 10/02/2012. The jewellery which was not recorded in the books of account till the date of search was already offered in the revised return of income and paid the tax before initiation of proceedings U/s 153A of the Act. The Id AR has submitted that total jewellery declared in the revised return is Rs. 15,88,450/- on which tax has already been paid and therefore, the addition made of Rs. 15.00 lacs is to be deleted.

19. On the other hand, the Id CIT-DR has submitted that the Assessing Officer has already allowed the benefit of more than Rs. 1,57,21,000/- to the assessee on account of reasonable quantity of jewellery in the hands of the family members of the assessee and only the balance amount of Rs. 15.00 lacs was added out of the total jewellery of Rs. 1,72,21,000/-. He has relied upon the orders of the authorities below.

20. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has found that out of the total jewellery of Rs. 1,72,21,000/-, the jewellery to the extent of Rs. 1,57,21,000/- was reasonable and justified in the hands of the family members and the remaining jewellery of Rs. 15.00 lacs was added in the income as unexplained investment. The Assessing Officer while dealing with this issue, has rejected the explanation of the assessee regarding the jewellery declared in the VDIS 1997, the purchase recorded in the books of account and the jewellery declared in the revised return of income. We find that the assessee has declared the jewellery of Rs. 15,88,450/- in the revised return of income and paid the tax on the same, however, neither the Assessing Officer nor the Id. CIT(A) has considered the jewellery which was declared in the revised return of income and further the purchases made by the assessee from 16/5/2011 to 30/1/2013 as per the purchase bills produced by the assessee. The Id. CIT(A) has turndown this explanation on the ground that the copies of the purchase bills were not found in the file of the Assessing Officer, therefore, if this claim of the assessee is found to be correct then no addition of Rs. 15.00 lacs is called for. Hence, in the facts and circumstances of the case, we set aside this issue to the record of the Assessing Officer to verify these facts of declaring the jewellery in the revised return of income as well as

purchases made by the assessee from 16/5/2011 to 30/1/2013 as well as the jewellery recorded in the books of account. If the claim of the assessee is found to be true then no addition on this account is required to be made. Needless to say, the assessee be given an appropriate opportunity of hearing.

21. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 20th December, 2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 20th December, 2018

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Bithal Dass Mundra, Kota.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Central Circle, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 433/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar