

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नईमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, CHENNAI**

**माननीय श्री वी.दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीयश्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI V. DURGA RAO, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकरअपीलसं./ ITA No.602/Chny/2023**  
**(निर्धारणवर्ष / Assessment Year: 2013-14)**

<b>Shri Padam J. Challani,</b> No.23/1, Habibullah Road, T.Nagar, Chennai-600 017.	<b>बनाम/ Vs.</b>	<b>ACIT</b> Central Circle-3(4), Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AEKPC-1816-N</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी कीओरसे/ <b>Appellant by</b>	:	Shri D. Anand (Advocate)- Ld.AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri AR.V.Sreenivasan (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	11-12-2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	16-01-2024

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aggrieved by confirmation of certain penalty u/s 271(1)(c) for Rs.4.54 Lacs for Assessment Year (AY) 2013-14, the assessee is in further appeal before us. The impugned order has been passed by learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] on 20.03.2023 in the matter of enhancement made in an order passed u/s 250(6) of the Act on 18.10.2022. The grounds taken by the assessee read as under: -

1. The order of Ld. CIT(A) is wrong, illegal and opposed to facts of the case.

2. The Learned CIT(A) erred in passing the order without due consideration of facts and submissions, which is bad in law.
3. The Learned CIT(A) failed to understand the fact that the Appellant had satisfactorily submitted all the relevant details, documents and evidences in support of all the issues raised by the Learned CIT(A) in the order.
4. The Learned CIT(A) erred by levying penalty u/s 271(1)(c) for the alleged LTCG on enhanced amounts of articles without disposing off the sources furnished and documentary evidence thereof submitted by the Appellant, including but not limited to relevant Wealth Tax and Income Tax returns, Invoices of purchase of the impugned articles, etc.
5. The Learned CIT(A) arbitrarily disallowed claimed amounts of the impugned articles received on various cultural functions by the Appellant, without any basis.
6. The Learned CIT(A) while completing the Penalty order, was in complete disregard of the Judicial precedence of the Hon'ble Supreme Court.
7. The Learned CIT(A) failed to establish the allegations on merits and has borrowed satisfaction from the Assessment Order.
8. The Learned CIT(A) despite being in receipt of corroborating evidence regarding the sale of alleged deficit amount of silver articles, arbitrarily computed LTCG and levied penalty on the alleged enhancement of Rs.22,04,162/- without any basis.
9. The Learned CIT(A) failed to bring any contrary evidence or documents to reject the claim and evidence of the Appellant.

2. The Ld. AR advanced arguments supporting the case of the assessee whereas Ld. Sr. DR submitted that the quantum additions have been sustained which call for impugned penalty against the assessee. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Proceedings before lower authorities**

3.1 The assessee belongs to Challani group of concerns which was subjected to search action on 19.04.2012. The returned income of Rs.9.39 Lacs as filed by the assessee was assessed at Rs.187.92 Lacs which travelled up to the level of Tribunal wherein the assessment was restored back to Ld. AO for re-adjudication after bringing on record the incriminating material, if any, found in the course of search. The Ld. AO reframed assessment on 17.10.2018 at Rs.170.83 Lacs after certain additions of excess gold and diamond jewellery and Ld. AO also

determined long term capital gain on silver articles and jewellery for Rs.21 Lacs.

3.2 The assessee's further appeal was disposed-off by Ld. CIT(A) vide order dated 18.10.2022. The Ld. CIT(A) allowed partial relief against gold jewellery addition. The deficit of silver was found at 97.7 Kg for which an addition of Rs.43.04 Lacs was made by Ld. AO in the original assessment order after allowing 10 Kg of allowance. However, in the set aside assessment, Ld. AO computed capital gains of Rs.21 Lacs only. Accordingly, Ld. CIT(A) proposed enhancement and put the assessee to show cause notice. The assessee opposed the same on the ground that the silver utensils belonged to an HUF entity and the same was decaded in the wealth tax returns filed by the HUF. Therefore, the gains could be charged in the hands of the HUF only. It was also submitted that silver utensils were personal effects and would not come under the definition of capital assets. However, Ld. CIT(A) rejected the arguments of the assessee. The alternative argument to provide the telescoping benefit of the sale was also rejected and Ld. AO was directed to assessee long terms capital gains at Rs.43.04 Lacs. In other words, the assessment was enhanced by Rs.22.04 Lacs on this account. Consequently, Ld. CIT(A) initiated and levy impugned penalty of Rs.4.54 Lacs on enhancement vide order dated 20.03.2023 against which the assessee is in further appeal before us.

3.3 In the meanwhile, the assessee assailed first appellate order before Tribunal vide ITA No.1096/Chny/2022 dated 28.06.2023. The bench, in para 8 of the order, deleted the addition made in assessee's hands towards excess gold jewellery, diamond jewellery and silver articles

found in the possession of other two family members. It was contended by the assessee that there was shortage of silver articles during the course of search in comparison to silver articles declared in the wealth tax returns. The shortage was sold by the assessee which was used to purchase gold and diamond jewellery. Accepting the same, the bench directed Ld. AO to allow telescoping benefit and delete additions of excess gold and diamond jewellery. Accordingly, the appeal was allowed. However, the assessee has assailed the penalty as levied by Ld. CIT(A) on enhancement on account of gains on silver articles.

#### **Our findings and Adjudication**

4. From the facts, it would emerge that there is actually shortage of silver article to the extent of 97.735 Kg in comparison to silver articles declared in the wealth tax returns filed by the assessee group. The excess of gold and diamond jewellery has been quantified in para 9 of Tribunal's order as 693.85 grams of gold jewellery and 35.570 carats of diamond jewellery. The bench has noted that the assessee has purchased 1950 grams of gold jewellery and 35.570 carats of diamond jewellery out of sale proceeds of silver articles. If the credit of the same is allowed, there would be no excess gold and diamond jewellery in the hands of the assessee. In fact, the shortage of 693.85 grams in gold jewellery is well covered by the stated purchase of 1950grams of gold jewellery by the assessee. This being the case, the estimation of gains on silver articles as computed by lower authorities could not be said to be perfect and accurate one. Considering this fact, it is not a fit case for imposition of penalty as done by Ld. CIT(A) in the impugned order. Therefore, we delete the same and allow the appeal of the assessee.

5. The appeal stand allowed in terms of our above order.

*Order pronounced on 16<sup>th</sup> January, 2024*

**Sd/-**

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

**(MANOJ KUMAR AGGARWAL)**

**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नईChennai; दिनांकDated :16-01-2024

DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF