

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VP AND SHRI GIRISH AGRAWAL, AM

ITA No. 5688/Mum/2024
(Assessment Year: 2014-15)

Dy. CIT-17(1) Room No. 232, 2 nd Floor, G-Block, Kautilya Bhavan, Bandra Kurla Complex, Bandra, Mumbai-400 051	Vs.	Late Ramesh Pannalal Ranawat Through Rahul Ramesh Ranawat (Legal Heir of Late Ramesh Pannalal Ranawat) 1 st Floor, Rangwala Building, 13/15, Dhanji Street, Kalbadevi, Mumbai-400 003
PAN/GIR No. ADTPR 8070 M		
(Revenue)	:	(Assessee)

&

CO No. 291/Mum/2024
(Arising out of ITA No. 5688/Mum/2024)
(Assessment Year: 2014-15)

Late Ramesh Pannalal Ranawat Through Rahul Ramesh Ranawat (Legal Heir of Late Ramesh Pannalal Ranawat) 1 st Floor, Rangwala Building, 13/15, Dhanji Street, Kalbadevi, Mumbai-400 003	Vs.	Dy. CIT-17(1) Room No. 232, 2 nd Floor, G-Block, Kautilya Bhavan, Bandra Kurla Complex, Bandra, Mumbai-400 051
PAN/GIR No. ADTPR 8070 M		
(Assessee)	:	(Revenue)

Appellant by	:	Shri Vipul Jain
Respondent by	:	Shri Bhangepatil Pushkaraj Ramesh

Date of Hearing	:	25.04.2025
Date of Pronouncement	:	21.07.2025

ORDER

Per Saktijit Dey, VP:

The captioned appeal by the department and cross objection by the assessee, arise out of order dated 02.09.2024, passed by National Faceless Appeal Centre, Delhi (NFAC for short), pertaining to the assessment year (A.Y.) 2014-15.

2. At the outset, we deal with the department's appeal, being ITA No. 5688/Mum/2024. The effective grounds of appeal raised by the department are as under:

1. *Whether on the facts and circumstances of the case and in law, ld. CIT(A) erred in deleting the addition made on account of undisclosed sales to the tune of Rs.9,92,77,960/-.*

2. *Whether on the facts and circumstances of the case and in law, ld. CIT(A) erred in deleting the addition made on account of unexplained stock transfer valued at Rs.98,92,329/-.*

3. Since, the facts relating to the dispute raised in the grounds are overlapping, the discussion on facts would be common for both the grounds.

4. Briefly stated, the assessee (since deceased) was a resident individual. For the assessment year under dispute, the assessee had filed his return of income on 26.09.2014, declaring total income of Rs.1,84,70,510/-. Basically, the assessee carried out business in manufacture and sale of gold jewellery through his proprietary concern, M/s. Ramesh Zaveri & Co., having its office at 13/15 Rangwala Building, 1st Floor, Shop No.1, Dhanji Street, Mumbai. The assessee had also a branch situated at Nayasarak, Cuttack, Odisha.

5. As the factual matrix reveals, on 10.04.2014, the Air Intelligence Unit ('AIU' for short) of the department situated at Mumbai domestic airport, intercepted a person named Shri Yashwant Ganpat Rao Gujjar, who was carrying about 11912.400 gms of gold ornaments. On being questioned, the concerned person stated that the jewellery belongs to M/s. Ramesh Zaveri & Co. and it was being transferred to the branch at Cuttack. The aforesaid information was passed on to the AIU at Bhuvaneshwar Airport to further verify the genuineness of the claim of transfer of gold jewellery from Mumbai to Cuttack and also the overall conduct of business. A survey u/s. 133A of the Act was conducted at the shop premises of M/s. Ramesh Zaveri & Co. at Cuttack by the DDIT, Cuttack on the very same day, i.e., 10.04.2014. Statements were recorded both from Shri Yashwant Ganpat Rao

Gujjar, who was carrying the gold jewellery from Mumbai to Cuttack as also from the person in-charge of business at Cuttack branch. Based on the statements recorded from the aforesaid persons as well as CCTV footage from 31.03.2014 to 10.04.2014 taken from the shop premises at Cuttack, the DDIT, Cuttack reported under-reporting of sales and consequential tax evasion.

6. Based on such information available on record, the Assessing Officer (AO) in course of assessment proceedings for the impugned assessment year called upon the assessee to explain the alleged discrepancy in cash-in-hand found on the date of survey, as also to explain the genuineness of alleged stock transfer of 27 kgs. of gold ornaments. The A.O. also called upon the assessee to explain that since the CCTV footage of 31.03.2014 revealed 106 persons visiting the shop premises at Cuttack, meaning thereby, 106 sales transactions had taken place, why it should not be presumed that similar sales transactions had taken place on the other days of the year and to that extent, the assessee had suppressed sales at Cuttack branch office. In this context, by extrapolating the alleged sales transactions of 31.03.2014 found from the CCTV footage to the other days of the relevant previous year, the A.O. worked out the total sales turnover to Rs.72,78,44,283/- and called upon the assessee to explain why profit should not be estimated on such sales turnover. Further, the A.O. noted that in March, 2014, the assessee had sent stock of gold jewellery weighing 36 kgs from Mumbai Head Office (HO) to Cuttack branch. Whereas, as per assessee's claim, out of 36 kgs of gold jewellery, 27 kgs. gold jewellery was returned back to Mumbai through Shri Yashwant Ganpat Rao Gujjar on 31.04.2014. However, the A.O. observed that in the statement recorded by the Department, Shri Yashwant Ganpat Rao Gujjar has denied of carrying any gold ornaments from Cuttack branch to Mumbai HO on

31.03.2014. Based on such statement, the A.O. called upon the assessee to explain why the alleged return of gold ornaments of 27 kgs. to Mumbai HO should not be rejected and the amount should not be treated as the sale made at Cuttack branch and profits be estimated. In response to the show cause notice, the assessee filed a detailed reply, denying the allegations of the A.O. However, the A.O. did not find merit in the submissions of the assessee. Relying upon the CCTV footage of 31.03.2014, taken from branch office, the A.O. extrapolated the alleged sale figures to 310 working days spread over the previous year. Thereafter, he estimated the average sale per invoice at 20.354 gms and average number of sales on particular day at 50. By applying the rate of Rs.2307.05 per gm., he determined the total sales turnover for the previous year at Rs.72,78,44,283/-. Thereafter, applying the gross profit rate of 13.64% reported at Cuttack branch, he determined the profit on undisclosed sales at Rs.9,92,77,960/- and proposed the said amount for addition.

7. Proceeding further, relying upon the statement of Shri Yashwant Ganpat Rao Gujjar, the A.O. held that assessee's contention of transfer of 27 kgs. of gold jewellery on 31.03.2014, cannot be accepted. In this context, he also relied upon the information received from the concerned Airline indicating that on the date of journey on 31.03.2014, Shri Yashwant Ganpat Rao Gujjar, did not carry any check-in baggage while travelling from Bhuvaneshwar to Mumbai. Thus, in the above premises, he recorded a finding of stock discrepancy of 27 kgs. of gold ornaments, determining the value at Rs.7,25,24,408/- . Applying the gross profit rate of 13.64% allegedly reported by the Cuttack branch, he determined the unexplained stock at Rs.98,92,329/- and proposed the amount for addition. In nutshell, the A.O. made aggregate addition of Rs.10,91,70,289/-.

8. The assessee contested these additions before the First Appellate Authority.

9. While deciding the appeal, learned First Appellate Authority took note of the submissions made by the assessee, the observations made by the A.O. in the assessment order as well as in the remand report and other material/evidences available on record. After examining all aspects, learned First Appellate Authority observed that based on a single day CCTV footage, the sale turnover for the entire year cannot be determined. More so, when it cannot be authentically stated that in reality 106 sale transactions had taken place on 31.03.2014. He observed that in absence of any corroborative evidence to establish that actual sale transactions to the extent assumed by the A.O. had taken place, sales turnover cannot be determined merely based on a single day CCTV footage and thereafter, extrapolating such figures to entire year's transactions. He further observed that the assessee not only maintained separate books of accounts for Cuttack branch office and Mumbai HO, but also maintained separate and distinct bank accounts for depositing the cash collected towards sales made at Cuttack branch office and sales relating to Mumbai HO. He observed, the cash collected at Cuttack branch and deposited in the bank account maintained for Mumbai HO was subsequently transferred to Mumbai. He observed, since all these transactions are entered in the books of account separately kept and maintained for Cuttack branch office and Mumbai HO, without any corroborative evidence to prove otherwise, the A.O. could not have proceeded to estimate the undisclosed sales. He observed, even the A.O. while estimating the sales turnover has not examined any of the customers, nor has considered the seasonal fluctuation in business, the impact of holidays and the nature of customer behavior in jewellery trade. He further observed that the

estimation of the gross profit at 13.64% is high and excessive, compared to the gross profit rate of 2.79% for the business as a whole.

10. Insofar as rejection of books of accounts maintained for Cuttack branch, learned First Appellate Authority observed that without pointing out any specific defects in the books of account, the A.O. could not have rejected them and made huge additions simply based on couple of statements and a single day CCTV footage. He observed, even the average rate of gold adopted for estimating the sales turnover is not at all acceptable as the rate of gold does not remain static for the entire year. He further noted that in course of survey, except some small discrepancy found with regard to cash-in-hand, no other incriminating material or discrepancy was noticed with regard to either sales or even stock. He observed, when the transfer of stock of 27 kgs. of gold ornaments from Cuttack to Mumbai has been duly recorded in the books of account maintained for Mumbai HO and which was accepted by the A.O., in the same breath, the transfer of stock recorded in the books of accounts of Cuttack office cannot be rejected. He further observed that for making an addition u/s. 69A of the Act, the assessee must be found to be the owner of undisclosed cash, for which no explanation is provided. However, in case of the assessee, no cash was found, which demonstrates that the assessee did not have any undisclosed sales. Thus, based on the aforesaid reasoning, learned First Appellate Authority, ultimately rejected the A.O.'s allegation of undisclosed sales and, thereby, deleted the addition made of Rs.9,92,77,960/-.

11. Insofar as, the addition made on estimating profit after rejecting the transfer of gold ornaments being 27 kgs. from Cuttack branch office to Mumbai HO, learned First

Appellate Authority observed that except the statement of Shri Yashwant Ganpat Rao Gujar, there is no other evidence on record to dispute assessee's claim of stock transfer. He observed, when the stock transfer was made through sales tax declaration, Form F and proper reconciliation was made matching invoice to invoice, there is no reason to disbelieve assessee's claim of stock transfer. More so, when the books of accounts of Mumbai HO, reflecting such stock transfer was accepted by the A.O. after due examination. He further held that due to prevaricating stand taken by Shri Yashwant Ganpat Rao Gujar, his statement that he has not carried gold jewellery weighing 27 kgs. on 31.03.2014, cannot be accepted. Thus, in the aforesaid reasoning, he deleted the addition of Rs.98,92,329/- as well.

12. Before us, learned Departmental Representative ('Id. DR' for short), strongly relied upon the observations of the A.O. Whereas, Id. Counsel appearing for the assessee made submissions reiterating the stand taken before the Departmental Authorities.

13. We have considered rival submissions and perused the materials on record, including the paper book furnished by the assessee, containing pages 1 to 164. The factual matrix reveals, the genesis of the disputed addition is the interception of Shri Yashwant Ganpat Rao Gujar, by AIU at Mumbai domestic airport. It is a fact on record that Shri Yashwant Ganpat Rao Gujar, was an employee of the assessee and used to regularly carry gold jewellery from the Mumbai HO to the branch office of the assessee at Cuttack. In fact, in the statement recorded by AIU at Bhubaneswar Airport on 10.04.2014, on which date Shri Yashwant Ganpat Rao Gujar was again carrying gold jewellery from Mumbai HO to Cuttack branch office, Shri Yashwant Ganpat Rao Gujar was specifically questioned by

the AIU in this regard and he admitted that he carries jewellery from Mumbai HO to Cuttack branch office. A reading of the assessment order, would further reveal that based on the statement recorded from Shri Yashwant Ganpat Rao Gujjar on 10.04.2014, further enquiry was made by the department by conducting a survey at the Cuttack branch. In course of survey, some negligent discrepancy relating to cash-in-hand, no other incriminating material relating either to underreporting of sales or discrepancy in stock was found. However, at the time of survey, the department took in its possession CCTV footages from 31.03.2014 to 10.04.2014. On examination of the CCTV footages, it was found by the department that on 31.03.2014, 106 number of persons visited the shop premises at Cuttack. Based on such analysis, the A.O. concluded that on 31.03.2014, 106 sale transactions had taken place. Extrapolating such number of sale transactions to other days of the year, after excluding holidays, the A.O. determined the sale suppression at more than Rs.72 crores. Except CCTV footage of 31.03.2014, the A.O. had no other incriminating material in his possession to infer the alleged suppression of sales.

14. It is a fact on record that the assessee directly effects sales to customers from Mumbai HO as well as it makes sales to customers at Cuttack from its Cuttack branch office. To identify the sales made by Mumbai HO and the sales made at Cuttack HO, the assessee maintains separate books of account for Mumbai HO and Cuttack branch office. The books of account are not only maintained regularly, but are also under statutory audit. The assessee also maintains separate bank accounts for Mumbai HO and Cuttack branch office at Cuttack and recovery of sale proceed for Mumbai HO is kept at bank account of Mumbai HO, whereas, cash sales of the Cuttack is deposited in the Cuttack branch bank account. This fact has not been controverted by the Department. In fact, such transactions

are separately recorded in the respective books of account. Therefore, the so called 106 transactions recorded in the CCTV footage of 31.03.2014, cannot be assumed to be the sales transactions relating to Cuttack branch office. Another crucial fact which cannot be ignored is, on the day of survey the department neither found any huge amount of cash from the Cuttack branch office nor any discrepancy in the stock was reported. These facts clearly reveal that there was no suppression of sale was physically detected at Cuttack branch office, as alleged by the A.O. Pertinently, the A.O. had also summoned the assessee to produce the books of account of Mumbai HO on 31.03.2014. Even after thorough verification, no deficiency or discrepancy was found in the books of account maintained for Mumbai HO and they were accepted by the A.O.

15. Thus, in absence of any incriminating material found during the survey, merely based on CCTV footage of a single day and extrapolating the alleged 106 sale transactions allegedly found in the CCTV footage to the other days of the year, the sales turnover could not have been estimated, as it has neither any rational or reasonable basis, hence, far removed from reality. Even, the average invoice amount of sale transactions and the rate taken by the A.O., is purely on guess work. On examination of the cash book, sales register and other documentary evidences placed in the paper book, it can simply be concluded that sales effected both at the Mumbai HO and Cuttack branch office have been duly reflected in the books of account, as there is no specific defect or discrepancy in the entries pointed out by the A.O.

16. In fact, in the appellate proceedings, learned First Appellate Authority has also verified all the documentary evidences and concluded that in absence of any

defect/discrepancy in the books of account, they cannot be rejected and simply based on the CCTV footage of a single day, sales turnover cannot be estimated by extrapolating the figures. More so, when the A.O. has not made any enquiry to either ascertain or demonstrate that the alleged 106 sales transactions, actually reflected the sales effected by the Cuttack branch office. Keeping in view the factual position emerging on record, we do not find any infirmity in the decision of learned First Appellate Authority in deleting the addition of Rs.9,92,77,960/-as such sales suppression is merely based on conjecture and surmises without any cogent evidence to establish it on record.

17. Insofar as, the addition made on account of stock transfer of 27 kgs. of gold ornaments from Cuttack branch office to Mumbai HO, it is a fact on record that the foundation of the addition is the statement recorded from Shri Yashwant Ganpat Rao Gujjar, an employee of the assessee. On a reading of the statement, it is revealed that on a query from the departmental authorities, Shri Yashwant Ganpat Rao Gujjar have denied of having undertaken any travel from Bhubaneswar to Mumbai on 31.03.2014. This is clearly demonstrated from answer to question no. 11, which reads as under:

Q11 As per our record you travelled from Mumbai to Bhubaneswar on 29.03.2014. Please state your travel itinerary from the date till now.

Ans. I have travelled only once on 07.04.2014 from Bhubaneswar to Mumbai through Indigo flight during this period. Thereafter, I have travelled from Mumbai to Bhubaneswar today i.e. 10.04.2014.

18. However, from the flight details of Shri Yashwant Ganpat Rao Gujjar, furnished by the assessee and information received from the concerned airline, it was established that on 31.03.2014, Shri Yashwant Ganpat Rao Gujjar, did travel from Bhubaneswar to Mumbai through Indigo flight. When this fact was confronted to Shri Yashwant Ganpat Rao Gujjar, he though admitted of having travelled from Bhubaneswar to Mumbai on that

date, however, he denied of carrying any gold jewellery weighing 27 kgs. Rather, he stated that he was carrying only a cabin baggage weighing 2.5 kgs. having his clothes in it. Based on his statement, the A.O. concluded that the claim of transfer of 27 kgs. of gold jewellery from Cuttack branch office to Mumbai HO, is not believable. It is a fact on record that on 02.03.2014, Mumbai HO had transferred gold jewellery weighing 36320 gms. to its branch at Cuttack, supported by statutory declaration Form F, issued by the Sales Tax Department. On 31.03.2014, out of 36320 gms of gold jewellery, the Cuttack branch office returned back 27333 gms. of gold ornaments, again supported by statutory declaration Form F issued by Sales Tax Department. It is further observed, the transfer of stock from Mumbai HO to Cuttack was through 15 branch transfer invoices, whereas, the return of stock from Cuttack to Mumbai HO was through 10 branch transfer invoices. The materials on record reveal that the assessee has reconciled the stock transfer from Mumbai to Cuttack and again from Cuttack to Mumbai, not only invoice-wise but through statutory declaration Form F. Even the stock transfer has been duly recorded in the books of account maintained both for Cuttack branch office and Mumbai HO.

19. Notably, though, the A.O. has rejected the books of account of Cuttack branch office, however, he accepted the books of account of Mumbai HO, which has duly recorded the receipt of 27233 grms. of gold ornaments received from Cuttack branch office through stock transfer. Thus, in our view, the A.O. cannot breath hot and cold at the same time as the transactions are two sides of the same coin. As rightly observed by the learned First Appellate Authority, merely relying upon the statement of Shri Yashwant Ganpat Rao Gujar, who is not at all trustworthy as he has taken contradicting stand time and again, it cannot be inferred that the claim of stock transfer from Cuttack branch office to Mumbai

HO, is false. More so, when the stock transfer both from Mumbai to Cuttack and again from Cuttack to Mumbai is supported by statutory declaration Form F issued by the Sales Tax Department of both the states. There is no material on record to suggest that the Sales Tax Department either at Mumbai or at Cuttack have alleged any fraudulent activity of stock transfer by assessee. The Sales Tax Authorities have also not reported any sale suppression. In these circumstances, merely relying upon the statement of Shri Yashwant Ganpat Rao Gujjar without any corroborative evidence, addition cannot be made. Though, the concerned airline has informed that on the day of travel Shri Yashwant Ganpat Rao Gujjar did not have any check-in baggage, however, there is no information from the airline regarding the cabin baggage carried by Shri Yashwant Ganpat Rao Gujjar. As rightly submitted by the assessee, valuable items like gold jewellery are generally not carried in check-in baggage, but rather safely and securely carried in cabin baggage. Thus, much reliance cannot be placed either on the statement of Shri Yashwant Ganpat Rao Gujjar or the information received from the airline authorities to conclude that no stock of 27233 gms. of gold jewellery have not been transferred from Cuttack to Mumbai dated 31.03.2014. In any case of the matter, the dispute is purely factual and has to be decided based on materials and evidences available on record. While, the assessee has furnished cogent evidences to establish his case that there was neither any sale suppression at Cuttack branch office, nor there is any unexplained stock discrepancy of 27 kgs. of gold ornaments, in contrast, the A.O. has failed to bring any corroborative evidence to vindicate his conclusion of sale suppression and unexplained stock discrepancy.

20. In view of the aforesaid, we do not find any infirmity in the decision of the First Appellate Authority in deleting both the additions. Accordingly, grounds are dismissed.

20. Insofar as CO No. 291/Mum/2024 is concerned, in view of our decision in department's appeal, being ITA No. 5688/Mum/2024, it has become infructuous. Hence, dismissed.

21. In the result, the appeal by the department and cross objection by the assessee are dismissed.

Order pronounced in the open court on 21.07.2025

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Saktijit Dey)
Vice President

Mumbai; Dated : 21.07.2025

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai