

IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'C' NEW DELHI

BEFORE : SHRI I.C. SUDHIR, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 2154/Del./2007
Asstt. Year : 1998-99

Income-tax Officer,
Ward 28(1), New Delhi.
(Appellant)

vs.

Smt. Geeta Devi Bindal,
GD-18, Pitampura Delhi-34.
(Respondent)

Appellant by : Sh. Amrit Lal, Sr. DR
Respondent by : Sh. T.R. Talwar, Adv. &
Sh. V.K. Gupta, C.A.
Date of hearing : 01.03.2017
Date of pronouncement : 20.03.2017

ORDER

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the Revenue against the order of Id. CIT(A)-XXV, New Delhi dated 21.02.2007 for the assessment year 1998-99 on the following ground :

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition amounting to Rs.21,93,197/- made on account of accommodation entry provided by M/s. Bishan Chand Mukesh Kumar in whose case, it was clearly established that the firm has not done any purchase and sale of jewellery but issued cheques in lieu of cash given by the assessee.”

2. The brief facts of the case are that the assessment in this case was completed u/s. 147 read with section 143(3) of the Income-tax Act on

28.03.2006 on the basis of information received from the DCIT, Central Circle-III, New Delhi that the assessee is one of the beneficiary of accommodation entries provided by M/s. Bishan Chand Mukesh Kumar in the garb of bogus transaction of sale of jewellery. The AO observed that a search was conducted in the case of Shri Bishan Chand, Shri Manoj Aggarwal resident of C-25/2, Baldev Park, New Delhi and their associated concerns on 3.8.2000 and it was held in their block assessments that M/s Bishan Chand Mukesh Kumar, partnership firm of Shri Bishan Chand and Manoj Aggarwal was not engaged in any real sale purchase of jewellery but were engaged in providing bogus accommodation entries to various persons. According to Assessing Officer the present assessee was one of such beneficiaries of the transactions relating to bogus sale of jewellery declared under VDIS, 1997 and sold to the jewellers. The AO held that the amounts of such sale proceeds credited in the books of account of the assessee was from undisclosed sources introduced in the garb of sale of jewellery to M/s Bishan Chand Mukesh Kumar and added the same accordingly u/s 68 of the Act to the total income of the assessee. In appeal the Id. CIT(A) deleted the additions, inter alia, by holding that assessee had discharged his burden that gold and diamond jewellery which were disclosed under VDIS 97 were sold to Bishan Chand Mukesh Kumar under proper sale voucher and sale proceeds were obtained through banking channel and were disclosed in books of accounts. Against this order, the Revenue preferred this

appeal before the Tribunal, which came up for hearing before the ITAT, Delhi Benches, New Delhi and was decided by the Tribunal vide order dated 18.08.2008, whereby the appeal of the Revenue was dismissed after following the decision of Special Bench of ITAT in the case of Manoj Agarwal & Others vs. DCIT, 113 ITD 377 (Delhi)(SB) as also the decision in the case of Tejinder Singh decided on 25.07.2008 in IT (SS)A No. 404/Del./2013. The Revenue carried the matter before the Hon'ble Delhi High Court, where the Hon'ble jurisdictional High Court vide a consolidated order dated 14.03.2012 has restored the matter back to the Tribunal with the following directions :

“Though we find that in almost all these cases there is a finding returned by the Commissioner of Income Tax that the transactions were genuine, since the revenue had challenged those findings, it was incumbent upon the Tribunal to independently examine each of the cases and return a specific finding as to whether there was a genuine transaction of sale of jewellery by the assessee to Bishan Chand Mukesh Kumar/Bemco Jewellers.

Since the Tribunal has not done that, we are setting aside the impugned orders and are remitting the matters to the Tribunal for considering this aspect of the matter so that the Tribunal can return a clear finding in respect of each of the matters as to whether the alleged transaction of sale of jewellery was genuine or not.”

It is how the present appeal again came up for hearing before the Tribunal.

3. The learned Departmental Representative, relying on the order of the Assessing Officer, submitted that in the assessment order of M/s. Bishan

Chand Mukesh Kumar, it was clearly held that it was engaged in providing accommodation entries against certain commission amount and the assessee was one of the beneficiaries of the said firm and, therefore, the addition made by the Assessing Officer ought to have been sustained and the Id. CIT(A) has wrongly deleted the addition made by the AO. It is submitted that before the AO, no documentary evidences pertaining to genuineness of the transaction of sale of jewellery were laid by assessee as can be seen from the assessment order. Therefore, the order of the AO deserves to be restored and that of the Id. CIT(A) to be set aside.

4. On the other hand, Id. Counsel for the assessee relying on the order of the Id. CIT(A), submitted that the sale transactions made to M/s. Bishan Chand Mukesh Kumar by various other persons/dealers have been accepted by various authorities as genuine keeping in view the fact that the transactions were supported by genuine vouchers, jewellery sold was declared and accepted in VDIS, 1997, the purchaser had confirmed the transactions and consideration thereof was received through banking channel. Reliance is placed on the decision of Hon'ble Allahabad High court in the case of CIT vs. Mohan Lal Agarwal, 35 Taxman.com 258 (Allahabad) and of ITAT Delhi Benches, New Delhi in the case of ITO vs. M/s. Sanjeev & Sons, HUF (order dated 19.08.2016 in ITA No. 362/Del/2007. A.Y. 1998-99). It was submitted

that all the relevant documentary evidences were laid before the AO to prove the genuineness of the transaction of sale of jewellery and the facts attending to the present case are identical to the facts involved in above decisions. He, therefore, urged for sustenance of the impugned order of Id. CIT(A).

5. We have considered the rival submissions and have gone through the entire material available on record and we find that the issue under consideration in the identical facts and circumstances, came up for decision before this Bench of ITAT in the cases of ITO vs. Ajit Prasad Jain and ITO vs. Ajit Prasad Jain (HUF) in ITA Nos. 4200/Del./2006 & 4199/Del./2006, where also the purchaser of the jewellery was same and the Tribunal vide order dated 19.01.2017 has restored the matter back to the file of Assessing Officer observing as under :

"5. We have heard and considered the submissions of both the parties and have gone through the entire material available on record. From the directions of Hon'ble Jurisdictional High Court, as reproduced above, the Tribunal is required to examine as to whether the alleged transaction of sale of jewellery was genuine or not and to return its finding thereat.

6. A perusal of impugned order reveals that one of the assessee's stands has been that the firm M/s. Bishan Chand Mukesh Kumar is assessed to tax regularly and for the instant year the assessment was completed u/s. 143(3) accepting the turnover declared by it. However, the fact remains that assessment in the case of M/s. Bishan Chand Mukesh Kumar has also been subsequently made u/s. 158BC of the Act, which has been taken into account by the AO in the instant proceedings. The assessee has not whispered even a single word on these

proceedings subsequently taken against the alleged purchaser u/s. 158BC of the Act. Hence, this stand of assessee does not render any support to the case of the assessee.

7. *The other stand of the assessee in both these cases has also been that the sales tax assessment of M/s. Bishan Chand Mukesh Kumar for the year was completed on the turnover of Rs.134 crores and the transaction of sale of jewellery was confirmed by way of affidavit of Sh. Bishan Chand and all these documentary evidences/orders were submitted before the AO. However, on perusal of the assessment order of assessee (HUF) shows that that the AO has recorded following categorical finding :*

“The assessee was required to furnish documentary evidence to the sale of this jewellery as also books of accounts, vouchers and bank passbook. A number of opportunities were given to the assessee but the assessee failed to furnish any information or supporting evidence. The assessee was specifically asked to furnish evidence to the acquisition of the above said jewellery. In the absence of any evidence, I have reason to belief that this is accommodation entry and has been routed through a sale bill by obtaining draft/cheque against payment of cash from M/s. Bishan Chand Mukesh Kumar.”

7.1 *In view of the above contradictions, it is not proper to record a decisive finding based on examination of such evidences, alleged to have been produced before the AO. Secondly, the Sales Tax assessment order of M/s. Bishan Chand Mukesh Kumar for the relevant year, placed in the paper book before us, nowhere reveals that the alleged sale of jewellery made by the assessee are included in the gross turnover declared to the Sales Tax authorities or not nor any such fact is written in the said sales tax assessment order. This fact cannot be ascertained by the Tribunal unless the list of total purchases submitted before the Sales Tax Authorities is placed on record before us for examination to ascertain whether the purchases allegedly made from the assessee were declared by the purchaser before the Sales Tax Authorities. However, no such list of purchase submitted before the concerned sales tax authorities, is available here on record. Secondly, it is also not clearly proved by any evidence that the purchase vouchers placed before us also formed the part of purchase vouchers placed before the Sales Tax Authorities for ascertaining the fact that the impugned sale of jewellery was included in*

the purchases of Bishan Chand Mukesh Kumar declared before the Sales Tax Authorities. This aspect of the case needs thorough examination at the stage of Assessing Officer from the records of Sales Tax Authorities and from books of purchaser before finally deciding the issue as per directions of the Hon'ble High Court.

8. The contention of the assessee is also that the impugned jewellery was declared in VDIS, 1997. This fact is evident from the documentary evidence placed by the assessee and is well recorded in the orders of the authorities below. However, it is not the stand of the assessee before us that the factum of declaration of jewellery in VDIS, 1997 was not there before the Hon'ble jurisdictional High Court before the matter has been restored back to the Tribunal for examination of actual sale transactions made by the assessee. Therefore, in view of express directions of Hon'ble jurisdictional High Court to examine the actual sale transactions made by assessee, the decisions relied by the assessee render no support to the assessee in the peculiar facts and circumstances of the instant case.

9. The other stand taken by the assessee has also been that some of the Assessing Officers at Amritsar, Delhi and Mathura have summoned Shri Bishan Chand and he in his statements had confirmed the purchase of jewellery and denied that they are providing only accommodation entries. However, here we find that the Id. Assessing Officer appears to have not summoned the said purchaser for verification of the actual purchase/sale transaction of the impugned jewellery. Therefore, before repudiating this stand of the assessee, the AO is required to summon the alleged purchaser of impugned jewellery and to record its statement to ascertain the truth. All these exercises are necessary to be made before deciding the issue in view of the directions of Hon'ble Jurisdictional High Court. Such exercises/enquiries, being not possible at the stage of Tribunal, can be conducted at the stage of Assessing Officer well. The Id. AR was asked if he has any other evidence to establish that the impugned sale of jewellery is recorded in any of books of a/c of purchaser, but he showed his inability to presently adduce any such direct evidence before us. On the other hand, the Id. DR also could not prove by any positive evidence to establish that the impugned sale of jewellery was not recorded in and verifiable from the books of alleged purchaser. In present of all these facts, we, therefore, think it appropriate in the interest of justice to restore the issue back to the file of Assessing Officer for deciding the same after verifying the actual

purchase/sale transaction & stock entry of impugned jewellery from the books of accounts of the purchaser, records of concerned Sales Tax Authorities and if need be, by summoning the purchaser for examination and also by considering all the stands taken by the assessee before the authorities below. Needless to say, the assessee shall be given reasonable opportunity of being heard before deciding the issue on merits in the light of observations made by us as above. Accordingly, the appeal of the Revenue is allowed for statistical purposes.

10. Since, the facts and circumstances involved in appeal of Revenue (ITA No. 4199/Del./2006) in the case of Ajit Prasad Jain & Sons (HUF) are quite identical on the issue of bogus sale consideration of jewellery to M/s. Bishan Chand Mukesh Kumar added u/s. 68 of the Act, our decision taken in ITA No. 4200/Del./2006, as above, will equally apply to this appeal also. Accordingly, this appeal of the Revenue also stands allowed for statistical purposes.

11. In the result, both the appeals of the Revenue are allowed for statistical purpose."

6. The issue, being fully covered by the above decision of coordinate Bench, we respectfully following the same, restore the present appeal to the file of AO to decide the issue afresh in view of the observations made by the Tribunal in the above decision. Accordingly, the appeal of the Revenue deserves to be allowed for statistical purposes.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 20.03.2017.

Sd/-
(I.C. SUDHIR)
Judicial Member

Sd/-
(L.P. SAHU)
Accountant Member

Dated : 20.03.2017

*aks/-