

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.5384/Mum/2014
(निर्धारण वर्ष / Assessment Years : 2012-13)

Ravindra Champalal Jain, 1901/02 Darshan Heights Zabavadi, Thakurdwar, Mumbai--400002	बनाम/ Vs.	Asstt. Commissioner of Income Tax, Central Circle-29, Room No.411,4 th floor, Aayakar Bhavan, M K Road, Mumbai-400020
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स्थायी लेखा सं./ PAN :AAAPJ83332J

अपीलार्थी की ओर से / Assessee by	Shri D B Sangvi
प्रत्यर्थी की ओर से/Revenue by	Shri B S Bist

सुनवाई की तारीख / **Date of Hearing** : **16.11.2016**
घोषणा की तारीख / **Date of Pronouncement** : **30.11.2016**

आदेश / ORDER

PER RAJESH KUMAR, AM

This is an appeal filed by the assessee challenging the order dated 19.5.2014 passed by the Id.CIT(A)-40, Mumbai confirming the addition of Rs.4,20,000/- on account of difference in amount of income disclosed during the statement recorded u/s 132(4) and income actually offered in return of income for the assessment year 2012-13.

2. Brief facts of the case are that the assessee filed e-return of income declaring a total income of Rs.97,20,610/- on 20.2.2013/-. The assessee was a key person of Darshan Group which was associated with Neev Group. These groups are engaged in the business of infrastructure and real estate developments. These Groups have developed a number of luxurious residential projects in the prime areas of South Mumbai and its vicinity. A search action was conducted u/s 132 of the Income Tax Act, 1961 on 22.9.2011 by the Deputy Director of Income Tax (Investigation), Unit –IV(4), Mumbai at the premises of Neev Infrastructure Pvt Ltd and its associated group concerns and individuals. Since the the assessee was associated with Neev Group, he was also covered under the search and seizure action. The Search and Seizure was also carried out on certain key persons of the Darshan Group including Shivalik Group. The AO observed that Shri Mafatlal V Shah was providing accommodation bills to the Neev Group. During the course of search operation, books of accounts, documents, valuables, diaries and other loose papers were seized. Similar search action was also conducted at the residence of assessee i.e. flat No.902, Suner Tower No.5, 9th floor, Sheth Motisha Lane, Mazgaon, Mumbai-400010 on 22.9.2011. During the search proceedings all the gold ornaments and diamond jewellery found were inventoried. The search team found that there was a difference in jewellery as mentioned in valuation report filed along with the wealth tax return of the family members of the assessee and

jewelry actually found during the search proceedings. The statement of the assessee and other related persons u/s 132(4) and 131 of the Act was recorded on 14.11.2011 in which the assessee offered Rs.15,00,000/- towards current year's income i.e. for the year under consideration to cover up the difference between the jewellery actually shown in the return and found during search. However, the assessee offered only Rs. 10,80,000/- in the return of income filed. The AO during the course of assessment proceedings issued show cause notice vide order-sheet entry dated 6.2.2014 calling upon the assessee as to why the difference of Rs.4,20,000/- between the disclosure made in search and amount actually shown in the return of income should not be added to the total income of the assessee. The assessee replied the said notice and explained that there was difference of Rs. 10,80,000/- only and Rs. 15,00,000/- was wrongly offered. The AO rejected the explanation and added same to the total income of the assessee vide assessment order dated 21.2.2014 by assessing the total income of assessee at Rs.1,01,40,610/- under section 143(3) of the Act. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A), who vide para 7 and 8 confirmed the action of the AO by observing and holding as under :

"7. During the course of appellate proceedings, the learned AR has argued that the appellant was not aware of the basis on which income of Rs.15,00,000/- was offered by him for the year under consideration, in the statement given u/s.132(4) of the Act on 14/11/2011. However, it appears that the appellant was provided with a copy of this statement, which was

so crystal clear, but still the assessee chose not to offer the full amount. I disagree with the contention of the assessee that there is no basis for the addition of Rs.4,20,000/- made by the AO. The basis of such addition is very clearly and categorically stated in the statement of the assessee itself, wherein it has been mentioned that this income is generated from real estate activities, which is not disclosed in the tax return. Thereafter, nothing further was required to be proved or mentioned by the AO. The learned AR in this regard has also relied upon Board's circular dated 10/3/2003, which more of advisory in nature to the officers, to collect evidence at the time of search. However, it is not a case where the assessee was forced to confess anything or assessee had surrendered a huge amount, which disproportionate to his sources of income, both explained and unexplained. Clearly, the amount of Rs.10,80,000/- is co-relatable to the investment in silver articles weighing 20.770 kgs. and the remaining amount was in the nature of other discrepancies and the income itself was generated from real estate activities. The learned AR in this regard has relied upon the following judgements :-

- a) ACIT vs. Harekrishna Exports - 34 CCH 048 (ITAT, Ahmedabad)*
- b) ACIT V/s Dharam Pal Gulati-36 CCH 509 (ITAT Delhi)*
- c) ACIT V/s Jorawar Singh M Rathod -94 TTJ 867 (ITAT, Ahmedabad)*
- d) DCIT V/s M L Jain -96 TTJ 362.*

However, I would like to mention that the facts of the present case are distinguishable from these cases, inasmuch as the surrender made by the assessee is clearly co-relatable with the sources of undisclosed income, mode of its earning and the assets in which such income was invested. In fact, out of RS.15,00,000/- surrendered by him during the course of the search, the appellant has himself included a sum of Rs.10,80,000/- in the return of income filed subsequent to the search, and from the submission of the assessee it appears that regarding the remaining income of Rs.4,20,000/-, there was some confusion to him - as to whether he surrendered Rs.10,80,000/- or Rs.15,00,000/-, at the time of search. However, from the sworn statement of the assessee, it is quite clear that he had clearly surrendered a sum of RS.15,00,000/-, in respect of silver articles (Rs.10,80,000/-) and for other discrepancies (Rs.4,20,000/-) and income for the same came from undisclosed real estate activities.

8. In view of the above facts, I have no hesitation in holding that the addition of Rs.4,20,000/- has been rightly made by the AO and does not

require any interference. The same is, therefore, upheld and this ground of appeal is rejected."

Aggrieved by the order of Id. CIT(A), the assessee has preferred an appeal before us.

3. Before us the Id.AR submitted before us that the order passed by the Id.CIT(A) was incorrect and wrong for the reasons that the Id. CIT(A) has upheld the order of AO without considering the facts on records. The Id. AR drew out attention to the page 12 of the assessee's paper book which is a show cause notice issued under section 142(1) of the Act, in which it was stated that during the search proceedings on residential premises of the assessee on 22.9.2011, the assessee offered Rs.15 lakhs to cover up the discrepancies in the investment in silver items and other items, whereas the actual income shown in the return of income filed for assessment year 2012-13 was only for Rs.10,80,000/- which was replied by vide letter dated 18.2.2014 which was filed at pages 13 and 14 of the paper book. The Id. AR submitted that the entire position was made clear before the AO, wherein it was replied that the assessee had intention of offering only Rs.10,80,000/- towards current income to cover up discrepancy of silver and other articles and Rs.15 lakhs was wrongly offered while making a statement u/s 132(4) recorded on 14.11.2014. The Id. AR submitted that the silver utensils were valued at Rs.10,80,000/- and therefore the same was offered to tax in assessment year 2012-13 and not Rs.15 lakhs as surrendered

during the course of search. The Id. AR submitted that since there was no material and incriminating documents or any other evidence found by the search authorities corroborating the surrender of Rs.15 lakhs, whereas as a matter of fact the actual difference was Rs.10,80,000/- which was actually offered by the assessee in the return of income filed for the assessment year 2012-13. The Id counsel submitted that the addition of Rs.4,20,000/- was s without any basis or incriminating materials and therefore be deleted.

4. The Id. DR relied upon the orders of authorities below and submitted that the addition made by the AO is fully and completely based on the declaration made by the assessee without any fear and coercion, therefore, the Id. DR prayed that the order of the Id.CIT(A) be upheld.

5. We have carefully considered the rival contentions and perused the relevant material placed before us including the orders of authorities below. We find that the assessee had disclosed an income of Rs.15 lakhs during the course of search proceedings at the time of recording the statement of assessee u/s 132(4) to cover various discrepancies in the jewellery and other items as per the wealth tax return and actually found by the search team. However, the assessee when found that there was discrepancy only of Rs, 10,80,000/- , he declared only Rs.10,80,000/- in the return of income as against the disclosure Rs.15 lakhs in search action. We find that the assessee denied the difference of

Rs.15 lakhs in the value of jewellery which was calculated at Rs.10,80,000/- by the valuer itself and accordingly submitted before the AO to accept the income of Rs.10,80,000/- as returned in the return of income filed. The AO not finding the reply of the assessee as convincing and devoid of substance, added the same to the total income of the assessee which was also upheld by the CIT(A) by holding that the assessee suo motto has admitted the impugned addition before the search party. In our opinion search team has not found any document or material incriminating corroborating the difference of Rs.15 lakhs whereas we find merit in the submissions of the Id.AR that the actual difference in value of jewellery as per the return and what was found during search was only of Rs. 10,80,000/- which was offered to tax in the return of income filed by the assessee. In our opinion, the action of Id.CIT(A) in upholding the order of AO is not correct as the income of Rs.4,20,000/- as confirmed by the Id.CIT(A) has no basis and therefore, we are inclined to set aside the order of Id.CIT(A) and direct the AO to delete the addition.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30.11.2016.

Sd
(MAHAVIR SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 30.11.2016

Sr.PS:SRL:

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM
श्री महाविर सिंग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष

आयकर अपील सं./I.T.A. No. 5384/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2012-13)

Rajendrakumar Champalal Jain, Flat No.2201, 22 nd floor, Ashiyana Tower, Laxmibai Jagmohan Marg, 25, Nepeansea road, Mumbai-400036	बनाम/ Vs.	Asstt. Commissioner of Income Tax, Central Circle-29, Room No.411,4 th floor, Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. : **PAN :AAAPJ83332J**

अपीलार्थी की ओर से / Assessee by	Shri D B Sangvi
प्रत्यर्थी की ओर से/Revenue by	Shri B S Bist

CORRIGENDUM

The Tribunal has passed order in this appeal on 30.11.2016 and in the title of the appeal, the name and address of the assessee has been mentioned as "**Ravindra Champalal Jain, 1901/02 Darshan Heights Zabavadi, Thakurdwar, Mumbai--400002**". By way of this corrigendum, we replace the name of the assessee and the address of the assessee "**Rajendrakumar Champalal Jain, Flat No.2201, 22nd floor, Ashiyana Tower, Laxmibai Jagmohan Marg,25, Nepeansea Road, Mumbai-400036**".

Sd
(MAHAVIR SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 8th Feb, 2017.

व.नि.स./ SRL , Sr. PS

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