

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA Nos.109 & 110/Bang/2016
Assessment year : 1998-99

Shri Seshmal J Jain PAN: ACCPJ 2833L & Shri Seshmal J Jain HUF PAN: AADHJ 4258E Dhanalaxmi Enterprises, New Gabbur, PB Road, Hubballi.	Vs.	The Income Tax Officer, Ward 1(4), Hubballi.
APPELLANTS		RESPONDENT

Appellants by	:	Shri Ravishankar, Advocate
Respondent by	:	Smt. Swapna Das, Jt. CIT(DR)

Date of hearing	:	27.06.2016
Date of Pronouncement	:	30.06.2016

ORDER

These appeals are preferred by the assesseees against the separate orders of the CIT(Appeals), Hubli dated 30.11.2015 and 27.11.2015 respectively for the assessment year 1998-99 *inter alia* on the identical grounds. The grounds of appeal raised in ITA No.109/Bang/16 are extracted hereunder:-

- “1. The order of the CIT (A) in so far as they are against the appellant are opposed to law, equity, and weight of evidence, probabilities, facts and circumstances of the case.
2. The appellant denies to be assessed at Rs. 6,18,030/- against the declared total income of Rs.1,03,030/- on the facts and circumstances of the case.
3. The learned CIT (A) is not justified in confirming the addition of Rs.5,15,000/- under section 68 of the Act on the facts and circumstances of the case.
4. The learned CIT(A) was not justified in confirming the finding of the AO that the nomenclature as per the declaration differed from the sale invoice and hence the said sale was out of gold different from the one in the declaration made on the facts and circumstances of the case.
5. The learned CIT(A) was not justified in relying on the observations made in the earlier appellate orders to arrive at a finding that the declaration stood unproved and hence the gold sold was not out of the declaration made.
6. The learned CIT(A) was not justified on facts in not considering the gold on hand with the appellant as per the declaration, to be the same gold sold on the facts and circumstances of the case.
7. Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax/Director General of Income Tax, the Appellant Firm denies itself liable to be charged to interest under section 234B of the Act which under the facts and circumstances of the case deserves to be cancelled. The calculation of interest under section 234B is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.
8. The appellant craves leave to add, alter, modify, delete or substitute any or all of the grounds and to file a paper book at the time of hearing the appeal.
9. In view of the above and other grounds that may be taken at the time of the hearing the appeal, the appellant prays that the appeal be allowed in the interest of justice and equity.”

2. Though various grounds are raised, but they all relate to introduction of cash in the books of accounts of the assessee on sale of gold and diamonds which were declared under Voluntary Disclosure of Income Scheme, 1997 (VDIS).

3. During the course of assessment proceedings, the Assessing Officer has noted that certain introduction of cash was explained by the assessee to have been introduced on account of sale of gold jewellery and diamonds. It was also contended by the assessee that under VDIS, the assessee has declared the gold ornaments/jewellery and diamonds studded with gold. The declaration was accepted under VDIS and later on gold jewellery was converted into gold bullion and separate diamonds which were sold and the sale proceeds were introduced in the books of account. The AO has raised a technical objection by stating that the items declared under VDIS were not the same, which were sold and the sale proceeds were introduced in the books of account.

4. When the matter reached the Hon'ble High Court of Karnataka, the Hon'ble jurisdictional High Court has remanded the matter back to the AO to give a specific finding as to, whether the items sold were the same which were disclosed under VDIS?

5. In the remand proceedings, the assessee has furnished the details of items sold and the evidence of conversion of the gold jewellery into gold bullion and diamonds. The weight of gold bullion and the diamonds were

the same. The AO did not accept the contentions of the assessee and again made the additions. Though the assessee has tried to explain the facts with details, but it was not acceptable to the CIT(Appeals).

6. Before the Tribunal, the assessee has filed a copy of the Valuation Report, VDIS Certificate, copy of sale of diamond and gold bullion and the evidence of conversion of gold jewellery into gold bullion and diamonds. From this evidence, the assessee has tried to explain that the same quantity of gold which were declared under VDIS were sold. Similar is the position in respect of diamonds also.

7. Per contra, the Id. DR strongly opposed the contentions of the assessee and placed heavy reliance upon the order of the CIT(Appeals).

8. Having carefully examined the orders of lower authorities and documents placed on record in the light of rival submissions, we find that the same quantity of gold and diamonds which were declared under VDIS were sold. Though the assessee has declared the gold jewellery studded with diamonds under VDIS, but in sale bill the assessee has sold gold bullion and diamonds separately. The assessee has filed evidence with respect to conversion of gold jewellery into gold bullion and diamonds.

9. Since the same quantity which was disclosed under VDIS was sold, we find no justification in making the addition on introduction of sale

proceeds in the books of account. Once the Revenue has accepted the declaration under VDIS and accepted the tax deposited by the assessee, it should not have made a further addition on account of introduction of sale proceeds of the said jewellery in the books of account. We therefore find no merit in the additions made by the revenue authorities. Accordingly, we set aside the order of the CIT(Appeals) and delete the addition.

10. In the result, the appeals by the assessees are allowed.

Pronounced in the open court on this 30th day of June, 2016.

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 30th June, 2016.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.