

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2718/Mds/2016

निर्धारण वर्ष /Assessment year : 2013-2014

M/s. Dilip & Sons (HUF)
No.102, Eldams Road,
Teynampet,
Chennai 600 018.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle 1(2),
Chennai.

[PAN AADHD 6701N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. A.S. Sriraman, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 21-12-2016

घोषणा की तारीख /Date of Pronouncement

: 11-01-2017

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

In this appeal filed by the assessee, it assails an addition of ₹4,15,65,882/- arising out of undisclosed gold jewelry found at the time of search.

2. Facts apropos are that assessee engaged in gold jewellery business had filed return of income for the impugned assessment year disclosing income of ₹26,91,860/-. There was a search u/s.132 of the Income Tax Act, 1961 (herein after referred to as 'the Act') in the premises of the assessee on 21.11.2012. A notice u/s.143(2) of the Act was issued to the assessee, calling for a return of income pursuant to which assessee had filed return declaring the very same income.

3. During the course of search, gold jewellery weighing 21456.550 grams was seized by the Department. As per Id. Assessing Officer assessee had submitted evidence for 4437 grams out of these and the balance of 16619.550 grams was accepted as undisclosed income in a statement recorded at the time of search. However, in return of income filed assessee had disclosed only 924.78 grams. As per assessee the balance represented gold jewellery deposited by family members and persons who were related to its business. Gold jewellery claimed by the assessee as belonging to its family members/relatives and parties related to its business were as under:-

Sl.No	Name	Weight in Grams
1	Smt. Bhagwanti Jain	2416
2	S.A. Dilip Kumar	1798
3	Smt. Anjana Bai	1750

4	Mrs. Kanchana Bai	1635
5	M/s. Gouthamchand & Sons	1060
6	N. Amarchand	1050
7	M/s. Dilipkumar & Sons	850
8	M/s. Amarchand HUF	750
9	Shruti	730
10	Manisha	680
11	Nitin Kumar	675
12	Praful Kumar	660
13	Sankesh	610
14	Smt. Lalita Bai	450
15	Gouthamchand Surana	388
16	N. Jegadesh	250
17	R.I. Deva	176
18	G. Sampathkumar	170
19	Anupdas HUF	166
20	Mr. V. Ramprakash	165
21	Mr. R. Somasundaram	115
	Total	16544

However, Id. Assessing Officer was of the opinion that affidavits and documents in support of the gold jewellery claimed by the assessee as belonging to its family members and parties related to its business, were prepared after search, only as an after thought. As per Id. Assessing Officer, Wealth Tax returns of the family members/relatives filed in support of the claim of gold deposits pertained to years prior to financial year 2003-2004. According to the Id. Assessing Officer out of the 16544 grams claimed by the assessee to have been received as deposits from its relatives /family members and other parties related to

its business, what could be accepted was only 4437 grams from the following family members/ relatives.

Particulars	In Grams	In Grams
Mrs. Kanchana Bai	450	
Nitin Kumar	250	
Sankesh	200	
S.A. Dilip Kumar	1749	
N. Amarchand	350	
Smt. Anjana Bai	1000	
M/s. Amarchand HUF	438	
Total		4437

The Id. Assessing Officer it seems relied on the statement given by the assessee during the course of search wherein it was mentioned by the assessee that there were deposits of gold ornaments weighing 4437 grams from his relatives. Apart from 4437 grams which Id. Assessing Officer accepted as received from assessee's relatives, he also accepted claim of the assessee with regard to stock of 834 grams in the business. Thus, out of seized jewellery 21456.550 grams, Id. Assessing Officer accepted claim of the assessee with regard to 5271.00 grams and the balance was considered as undisclosed investments. This was valued at ₹4,40,40,882/-. Since assessee had itself disclosed ₹24,75,000/- in its return for undisclosed jewellery, balance of ₹4,15,65,882/- was added to the income of the assessee.

4. Aggrieved, the assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that explanation offered for substantiating the source of acquisition of gold jewellery with supporting evidence was rejected without any cogent reasons. As per assessee gold jewellery found at the time of search was of 80% purity and therefore net weight when converted to 91.6% purity was only 18,302.79 grams. As per assessee, Id. Assessing Officer while accepting 5,271.00 grams of gold jewellery as explained, failed to consider affidavits, Wealth Tax Returns and VDIS declaration of very same relatives who had affirmed depositing gold jewellery totaling 15502 grams with the assessee. Further, as per assessee gold jewellery given by goldsmith which were relating to its business, came to 1042 grams and this was also supported by affidavits from concerned persons. Contention of the assessee was that Id. Assessing Officer had relied on gold deposit agreements found at the time of search, aggregating 4437 grams ignoring the availability of gold jewellery received from very same family members which were reflected in respective VDIS declaration/Wealth Tax returns. Thus, as per assessee a part of the source was accepted whereas other part was rejected. As per assessee this was not a logical approach. Assessee in its submission before Id. Commissioner of Income Tax (Appeals) categorized the gold

jewellery deposits received from its family members and others and explained the difference in gold jewellery as under:-

<i>'Undisclosed investment</i>	-	<i>21,456.550 gms</i>
<i>Net Weight</i>	-	<i>20,956.690 gms</i>
<i>Converted to 22 carat purity-</i>		<i>18,302.790 gms</i>

Source for the gold jewellery

<i>Source</i>	<i>Quantity in terms of Grams</i>
<i>Category A- As per deposits agreements relatives</i>	<i>3831.00</i>
<i>Category B- As per VDIS & Wealth Tax returns from relative supported by affidavits</i>	<i>7234.00</i>
<i>Category C – From business associates</i>	<i>1042.00</i>
<i>Accepted by the DCIT</i>	<i>5271.00</i>
<i>Disclosed in the return of income</i>	<i>924.79</i>
<i>Total</i>	<i>18,302.79</i>

5. Ld. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee was of the opinion that in the statement recorded at the time of search, assessee had answered question No.7 as under:-

'Q. No.7. During the course of search in this premises, gold jewelry weighing gross weight of 21456.550 grams were found. Kindly tell me how this

jewelry had been acquired.

Ans. Sir, in the statement recorded u/s.131 during the day, I have stated that I have purchased 400 grams of primary gold from MNC Bullion Limited, apart from this, the following persons deposited gold ornaments:-

<i>Mrs. Kanchana Bai</i>	<i>450 grams</i>
<i>Master Sankesh bhai</i>	<i>200 grams</i>
<i>Smt. Anjana Bai</i>	<i>1000 grams</i>
<i>Myself</i>	<i>1749 grams</i>
<i>Amarchand & Sons, (HUF)</i>	<i>438 grams</i>
<i>Nitinkumar Suran</i>	<i>250 grams</i>
<i>N. Amarchand</i>	<i>350 grams</i>
<i>Total</i>	<i>4437 grams</i>

I am producing the evidence for the same. Thus, totaling to 4837 grams (inclusive of purchase from MNC Bullion Limited at 400 grams as mentioned above) leaving a difference of 16619.550 grams of jewelry (gross) which represents my personal gold. This 16619.550 grams of gold belongs to me and not belong to anybody else. Thus 16619.550 grams does not include anybody else jewelery except myself".

According to him, assessee could bring-in evidence at the time of search, only for 4437 grams. Conclusion of the Id. Commissioner of Income Tax (Appeals) was that the stereo- type affidavits all of which were dated 28.11.2013 filed by the assessee in support of deposits of gold jewellery in excess of what was mentioned above, was only an

after thought and a story cooked up by the assessee. Ld. Commissioner of Income Tax (Appeals) noted that assessee has made this claim after one year from the date of search, catching hold of people from his community who had filed Wealth Tax returns. Further, as per Ld. Commissioner of Income Tax (Appeals), it could not be believed that women who had emotional attachment towards their jewellery handed over such jewellery to the assessee. He thus, rejected the contention of the assessee and confirmed the addition made by the Ld. Assessing Officer.

6. Now before us, the Ld. Authorised Representative strongly assailing the orders of the lower authorities submitted that jewellery weighing of 15502 grams received from relatives/family member and 1042 grams received from its business associates who were gold smiths were supported by respective affidavits. As per the Ld. Authorised Representative these were ignored and rejected without any reasons. Contention as per Ld. Authorised Representative was that out of the gold deposits claimed by the assessee from its fifteen family members aggregating 15502 grams, Ld. Assessing Officer partly accepted 4437 grams and rejected the balance despite their jewellery holding being reflected in their respective VDIS/ Wealth Tax returns filed, well prior to the search. As per Ld. Authorised Representative

affidavits filed by these persons were rejected without any verification. According to him, lower authorities placed undue importance on the statement given by the assessee during the course of search when strong evidence to the contrary was produced by the assessee. According to him, addition was fastened on assessee even without considering the purity factor. Neither the affidavits were verified nor the contentions of the assessee were properly considered by the lower authorities. Thus, according to him, the addition made had no legs to stand. Reliance was placed by the Id. Authorised Representative on the judgment of Hon'ble Apex Court in the case of *Mehta Parikh and Co vs. CIT (1956) 30 ITR 181*.

7. Per contra, Id. Departmental Representative strongly supporting the orders of the authorities below submitted that Id. Assessing Officer had accepted source of the gold jewellery in so far as assessee could bring in evidence at the time of search. According to him, what was rejected was only the claim of the assessee made subsequent to the date of search, which was nothing but an after thought. Assessee had clearly admitted undisclosed jewellery of gold at the time of search and having done so it was manufacturing new stories and documents to wriggle out of the liability to pay tax on the undisclosed investments. Thus, according to him, addition was rightly

done by the Id. Assessing Officer and sustained by the Id. Commissioner of Income Tax (Appeals).

8. We have considered the rival contentions and perused the orders of the authorities below. Jewellery found at the time of search was 21456.550 grams. One of the claim of the assessee was that such jewellery was of low purity and after excluding stones and conversion to 91.6% purity, its equivalent weight would be 18,302.790 grams only. However, neither Id. Assessing Officer nor Id. Commissioner of Income Tax (Appeals) had dealt with the correctness of this claim and why it could not be accepted. Coming to the variation in quantity out of gold jewellery deposits totaling to 15502 grams claimed to have been received from relatives, Id. Assessing Officer had accepted 4437grams but rejected 11065 grams. Reason for accepting 4437 grams is presumably based on a reply given to question No.7 recorded from the assessee at the time of search which has been reproduced by us at para 5 above. Contention of the assessee however was that it had actually received more than what was mentioned in the statement and this was supported by affidavits received from respective relatives. Details of the claim of gold deposits from relatives and the extent to which it was accepted and extent to which it was supported by the Wealth Tax and VDIS returns of respective persons were as under:-

Sl. No	Name of family members	PAN	Total Gold	Gold deposit accepted by Assessing Officer	Gold reflected in VDIS	Gold Deposit reflected in WT Return
1	Mrs. Kanchana Bai	AACPB6980G	1635	450	1650	
2	Nitin Kumar	ACRPN9209M	675	250		675
3	Sankesh	ARYPS8168C	610	200		610
4	S.A. Dilip Kumar	ADPPD8896D	1798	1749	1257	541
5	N. Amarchand	AABPA8645G	1050	350	970	80
6	Smt. Anjana Bai	AAFPD4331A	1750	1000		1784
7	M/s. Amarchand HUF	AACHA2068N	750	438		750
8	M/s. Dilip & Sons HUF	AADHD6701N	850			1184
9	Smt. Bhagwanti Jain	AEYPJ4322A	2416		1505	912
10	Praful Kumar	AITPP1771G	660			660
11	Shruti	ARYPS3028H	730			730
12	Manisha	AHVPM1252G	680			680
13	M/s. Goutham chand & Sons	AALHS6983B	1060			1060
14	Gourthamchand Surana	ADVPG4975E	388			388
15	Smt. Lalita Bai	ACUPK7889H	455			1130
			15502	4437	5382	11184

No doubt statement given u/s.132(4) of the Act can be used as an evidence against the person making such statement in any proceedings under the Act. Hon'ble Jurisdictional High Court in the

case of *CIT vs. S. Jayalakshmi AmmaL (TCA Nos.488 and 489/2016, dated 01.08.2016)* had held that there could be no addition based on Sec. 132(4) of the Act alone without corroborative evidence. Thus, an assessee can always bring in evidence to show that what was stated by him was incorrect. Where the assessee asserts that it had received as gold deposits from its family members/ relative more than what it was stated at the time of search and such assertion is supported by affidavits and corroborative evidences likes VIDS declaration of the giver/ creditor and copies of Wealth Tax returns of the giver/creditors, in our opinion it was incorrect to brush it aside. Lower authorities simply went by a presumption that the claim was an after thought. Gold deposits agreements stipulates a return on investments to the credit and therefore this cannot be deemed gratuitous transactions.

9. Even otherwise, when the relatives/family members had come forward to file affidavit in support of deposit of gold jewellery and which were in turn supported by VDIS/Wealth Tax returns filed, prior to the date of search, it could never be considered as an after thought. In the circumstances, we are of the opinion that claim of the assessee that 15502 grams of gold represented deposits from its family members and relatives, in our opinion had to be accepted. Since Assessing Officer had accepted only 4437 grams out of it, we

delete the addition for the value of the balance of 11065 grams as well. Ld. Assessing Officer is directed to give relief to the assessee to this extent.

10. Coming to the gold jewellery claimed by the assessee to have received from gold smith aggregating 1042 grams, it is not disputed that assessee had filed affidavits in support. The claim of 1042 grams were from the following persons:-

01.	Mr. V. Ramprakash	:	165.00
02.	Mr. R. Somasundram	:	115.00
03.	R.I. Deva	:	176.00
04.	N. Nagadeesh	:	250.00
05.	G. Sampathkumar	:	170.00
06.	M/s. Anuphas HUF	:	166.00
		-----	1,042.00

None of the lower authorities had examined the claim of the assessee that 1042 grams of gold jewellery belonged to goldsmith, whose affidavits were also filed. We are of the opinion that the correctness of claim of the assessee with regard to 1042 grams claimed to be received from the goldsmiths, requires fresh verification. Similarly, claim of the assessee that after excluding stones and converting the jewellery to 91.6% purity actual weight would only be 18302.790 grams also requires fresh look by the Id. Assessing Officer. The Id. Assessing Officer has to verify affidavits of the goldsmiths/ business

associates filed by the assessee before coming to the conclusion whether the claim of source for 1042 grams of gold could be accepted. Thus, while deleting the addition for the value of gold jewellery received by the assessee from its family member/ relatives, we remit the issue regarding claim of the assessee on actual weight of jewellery found at the time of search, and source for 1042 grams claimed to have been received from business associates back to the file of the Assessing Officer for consideration afresh in accordance with law.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on Wednesday, the 11th day of January, 2017, at Chennai.

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:11th January, 2017.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER