

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, F, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

**श्री अमित शुक्ला, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Amit Shukla, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.7457/Mum/2011
Assessment Year: 2007-08**

Vimal Kumar Rathi, Nirmal Bungalow, Gulmohar Cross Rd. No.5, JVPD Scheme Mumbai-400049	बनाम/ Vs.	DCIT Cen. Cir-17 & 28, RNO.401, 4 th Flr. M.K. Road, Mumbai-20
(Revenue)		(Respondent)
P.A. No.AABPR3676A		

Assessee by	Shri G.P. Mehta (AR)
Revenue by	Shri Rajesh Ojha (DR)

सुनवाई की तारीख/ Date of Hearing:	20/07/2016
आदेश की तारीख / Date of Order:	10/08/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the assessee against separate orders of Ld. order of Ld. Commissioner of Income Tax(Appeals)-39, Mumbai, {(in short 'CIT(A)'}, dated 15.07.2011 passed against assessment order u/s 143(3) of the Act, dated 31.12.08 for the A.Y.2007-08 on the following grounds:

“1. The orders passed by the learned lower authorities are bad in law and bad in facts.

2. The learned lower authorities have grossly erred in making an addition of Rs.1,508,077/- on account of jewellery found at the time of search to the returned income in clear disregard of the provisions of law read with judicial propositions.

3. The learned lower authorities have grossly erred in making/upholding an addition of Rs.1,508,077/- on account of jewellery found at the time of search, even though no material or evidence including the break-up of valuables found is available on record. The impugned addition, therefore, is tainted with arbitrariness.

4. The learned CIT(A) has grossly erred in not admitting the evidences filed in support of appellant's claim that jewellery found at the time of search and valued at Rs.1,508,077/- did not belong to the appellant, even though specific directions to file such evidences were given during the course of the appellate proceedings.

5. The impugned addition of Rs.1,508,077/- has been made without any basis and without considering the explanation of the appellant read with instructions of CBDT.

6. Having regard to the facts of the case, provisions of law & judicial propositions, the entire addition of Rs.1,508,077/- is wholly uncalled for and untenable in law.”

2. During the course of hearing, arguments were made by Shri G.P. Mehta, Authorised Representative (AR) on behalf of the Assessee and by Shri Rajesh Ojha, Departmental Representative (DR) on behalf of the Revenue.

3. The brief background in this case is that search and seizure action u/s 132 of the Act was conducted on the premises of the assessee. During the course of search some jewellery was found and a part of the jewellery was seized. During the course of assessment proceedings, the AO asked the assessee to explain the jewellery found. In absence of proper explanation

to the satisfaction of the AO, a sum of Rs.20,41,839/- was added as income from undisclosed sources on account of unexplained jewellery.

3.1. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) where the assessee made detailed submissions and also filed additional evidences to explain the jewellery. The Ld. CIT(A) sent these evidences to AO for examination of these evidences and sending thereafter his remand report.

3.2. The AO sent remand report dated 2.06.2011 which was considered by Ld. CIT(A) before passing his order. The Ld. CIT(A) did not admit the additional evidences and without considering these evidences, he confirmed the addition partly to the extent of Rs.15,08,077/- out of total at Rs.20,41,839/- made by the AO.

3.3. Being aggrieved again, the assessee filed appeal before the Tribunal. During the course of hearing before us, it was argued by the Ld. Counsel that there is contradiction in the facts noted by the AO and the fact as have been recorded by the Ld. CIT(A). Since proper opportunity was not given by the AO, therefore evidences could not be submitted before the AO. Under these circumstances, additional evidences should be considered before deciding this ground in the interest of justice and therefore, the request was made to send this issue to the file of the AO for a fresh decision after considering evidences brought on record by the assessee before the Ld. CIT(A).

3.4. We have gone through the orders of the lower authorities and agree with the factual submissions made by the Ld.

Counsel before us. We noticed a contradiction between the findings recorded by both the authorities in their orders. It is pointed out that AO in his order mentioned that total jewellery was found for Rs.31,32,374/- at the time of search, and out of it jewellery worth Rs.20,41,839/- was seized by the DDIT(Investigation). On the other hand, it is mentioned by the Ld. CIT(A) in the appeal order that total jewellery worth Rs.48,00,330/- was found during the search. It is further mentioned by the Ld. CIT(A) that the search team did not seize any amount of jewellery. It is further mentioned by the Ld. CIT(A) that during the remand proceedings, the AO himself accepted jewellery for an aggregate amount of Rs.32,91,553/-. Thus, there is a stark contradiction when the facts recorded by AO and Ld. CIT(A) are compared.

3.4.1. Further, on the one hand, Ld. CIT(A) stated in his order that total jewellery was found for Rs.31,32,374/-, and on the other hand, Ld. CIT(A) stated in the said order that during the remand proceedings jewellery worth Rs.32,91,553/- has been accepted by the AO during the remand proceedings. Thus, if it is correct, then no addition ought to have been made in the hands of assessee. There seems to some fallacy which needs to be reconciled.

3.4.2. Further, the assessee has brought on record some evidences to explain the jewellery, which were not considered before deciding this issue against the assessee. In our considered view, when the search proceedings are done and the assessment pertaining to the search action is carried out, a voluminous exercise is done by the assesseees for explaining

ample number of issues arising under such proceedings. Under these circumstances, there may be certain evidences which may not have been placed at the earliest opportunity given to the assessee due to various reasons. But, doors of justice should not be closed by not considering the evidences which may be placed by an assessee, under such circumstances at the stage of first appeal. In our view, an issue should not be decided against the assessee without even examining the evidences brought on record by the assessee. Therefore, keeping in view, the contradictions recorded in assessment order and order passed by the Ld. CIT(A) and keeping in view the principles of natural justice, we send this issue back to the file of the AO with the direction to take into his consideration the evidences as may be placed by the assessee before the AO for which full opportunity shall be given to the assessee and AO shall decide the issue after considering on objective basis, the details and evidences and other material on record. The assessee is free to raise all legal and factual issues with respect to these grounds. These grounds are treated as allowed for statistical purposes.

4. In the result, the appeal filed by the assessee as may be treated as allowed for statistical purposes.

Order pronounced in the open court on 10th August, 2016.

Sd/-

(Amit Shukla)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 10/08/2016

Patel, P.S./नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai